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Online Resources

UN Peacemaker: <http://www.peacemaker.un.org>

Mediation Support Network: <http://mediationsupportnetwork.net>

Preventive Diplomacy by Intergovernmental Organizations: Learning from Practice

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Abstract

Conflict prevention is enjoying a renaissance in international policy circles. However, the official machinery of the international community presently offers few institutions with a specific mandate to address the causes of political violence at an early stage. One such multilateral mechanism dedicated solely to the prevention of conflict is the High Commissioner on National Minorities (HCNM) of the Organization for Security and Co-operation in Europe (OSCE). Over two decades, the office has developed a significant track record of effectiveness against which to examine the preventive efforts of other intergovernmental organizations. In this article, we examine the prevention efforts of the HCNM in Georgia, Macedonia, and Ukraine and compare these with the preventive diplomacy of three other intergovernmental organizations (IGOs): the Organization of American States (OAS) in Guyana, the Commonwealth in Fiji, and the UN in Afghanistan, Burundi, and Macedonia. Our findings offer some useful and surprising insights into effective prevention practice, with implications for how IGOs might improve preventive diplomacy in the future.

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Keywords

preventive diplomacy, intergovernmental organizations, conflict prevention, High Commissioner on National Minorities (HCNM), Organization of American States (OAS), Commonwealth of Nations, United Nations SRSGs, Afghanistan, Burundi, Fiji, Georgia, Guyana, Macedonia, Ukraine

Inter-communal and related conflicts – often with ethnic, religious and linguistic dimensions – are among the principal sources of political violence throughout the world (Human Security Report 2009–10: 10). Research has shown that by the time such violence breaks out, a conflict has developed its own dynamics, substantially reducing the chances for successful diplomatic engagement and largely leaving the international community with costly options and uncertain outcomes from other kinds of intervention. Effective preventive diplomacy, at the earliest signs of tensions, is urgently needed to prevent such conflicts from becoming violent.

Fortunately, conflict prevention is enjoying a renaissance in international policy circles. For example, the 2010 Quadrennial Diplomacy and Development Review, developed by the U.S. State Department, identifies conflict prevention as one of the key pillars around which the Agency must organize its efforts in the near term (U.S. Department of State 2010: 12–15). Similarly, the 2011 World Development Report from the World Bank focuses on the importance of preventing conflict as a crucial goal for enhancing development (World Bank 2011: 5–6).

While these represent significant steps to put commitments in place for governments and other international actors, the official machinery of the international community presently offers few institutions with a specific mandate to address the causes of political violence at an early stage. One such multilateral mechanism dedicated solely to the prevention of conflict is the High Commissioner on National Minorities (HCNM) of the Organization for Security and Co-operation in Europe (OSCE). Established in 1992 to contribute to the prevention of inter-group conflict through “quiet diplomacy,” the office of the HCNM offers, with almost two decades of experience in a score of countries, a significant track record of effectiveness against which to examine the preventive efforts of other intergovernmental organizations.

The richly detailed case studies in this issue of *International Negotiation* were written with such a comparison in mind.² As will be explained below, the HCNM

²) These case studies are: “The Possibilities and Limitations of Preventive Action: The OSCE High Commissioner on National Minorities in Ukraine”, by Angela Kachuyevski; “Preventive Diplomacy Work in the Organization of American States (OAS): The 2006 Elections in Guyana,” by Taryn Lesser; “Conflict Prevention in the Commonwealth: The 2000 Fiji Coup,” by Craig Collins and Jon Fraenkel; and “The Slide from Withdrawal to War: The UN Secretary General’s Failed Effort in Afghanistan, 1992,” by Dipali Mukhopadhyay.

model for violence prevention, developed during the first ten years of the office and built upon in the years since, inspired our design of a conceptual framework to analyze how IGOs conduct preventive diplomacy, with or without the mandate to do so. Our goal was to explore the proposition that preventive diplomacy by IGOs could be improved if they adopted some elements of the HCNM model.

In all, we collected data on eight cases: three efforts of the HCNM, in Ukraine, Georgia, and Macedonia; one case of the Organization of American States, in Guyana; one case of the Commonwealth, in Fiji; and three UN efforts in prevention, in Burundi, Afghanistan, and also in Macedonia. This selection allowed for comparisons across four quite different types of intergovernmental organizations with varying mandates and capacities, as well as coverage of conflicts in a diverse set of contexts – Africa, Latin America, the Pacific Rim, Europe, the Caucasus, and Central Asia. Brief summaries of each of these cases are presented below, along with a detailed description of our rationale for case selection and our research methodology.

In brief, our findings are:

- The mandate of an IGO is important in providing the authority for the IGO to enter a potential conflict situation early, and it can also provide flexibility in terms of the sources of conflict it is allowed to address. To the extent that mandates limit either timing or flexibility in ways that preclude early engagement, prevention efforts can be undermined.
- In order for operational prevention by an IGO to be successful, one of two conditions must be present: either the intervention is requested, and the parties therefore are motivated to seek agreement; or the IGO has sufficient leverage to entice or threaten the parties into a deal. If neither of these conditions is present, the possibility for preventing violence is slim.
- Norms can be used as positive leverage, to remind members of their common values or to appeal to “good citizenship” more broadly. They can also be used to help with face-saving, to allow governments in particular to make concessions in service of norms rather than in response to pressure or demands from adversaries.
- For both short term and longer-term prevention, the IGO must operate with the highest level of professional mediation skill. This means: being impartial; understanding the importance of inclusion and knowing how to operationalize it; being creative in generating options; and taking a problem-solving approach that incorporates the interests of all parties.
- The most sustainable prevention occurs when the relationship between groups is not only improved, but also enshrined in domestic laws and/or institutions that guarantee its continuation. The value of the HCNM

approach, unlike those of any of the other IGOs, is its commitment to catalyzing these changes in laws and institutions, helping countries translate abstract values into realities, and staying engaged over an extended period to support these changes.

In this article, we begin by providing a brief update on the status of research related to preventive diplomacy in general, including reflections on the role of intergovernmental organizations in particular. We then present in detail the design of our analytic framework for case comparison and the results of that analysis.

Brief Review of the Etiology of and Research on Preventive Diplomacy

The conflict prevention agenda was initiated more than 50 years ago, when Dag Hammarskjöld, former UN Secretary General, first used the words “preventive diplomacy” in 1960, referring to the need to keep third-world confrontations between the superpowers from escalating to global proportions (Lund 2009: 288). In 1992, the UN Secretary General’s office redefined the term with Boutros Boutros-Ghali’s *Agenda for Peace*, in which prevention was updated to respond to post-Cold War realities. In this context, preventive diplomacy required the international community “... to seek to identify at the earliest possible stage situations that could produce conflict, and to try through diplomacy to remove the sources of danger before violence results” (Boutros-Ghali 1992: Article 15). The appropriate timing of intervention – i.e., what constitutes the “earliest possible stage” – was thus introduced as one of the many challenges in analyzing and implementing prevention.

Research has also helped to frame our understanding of conflict prevention more broadly, beginning with the Carnegie Commission on Preventing Deadly Conflict, which published numerous books and articles along with its landmark final report (Carnegie Commission 1997). One of its contributions was to define a conceptual and practical distinction between operational and structural prevention: “operational” prevention is defined as action taken to stop impending violence, and “structural” prevention as the longer-term tasks of changing the underlying political/economic/social conditions that can lead to violence. We have used this distinction in our study, as a way to assess success in prevention efforts. The Commission also argued for prevention at various stages in the conflict cycle, not only before violence occurs but also to prevent the further escalation or spread of violence after it had already begun.

Michael Lund’s study, *Preventing Violent Conflicts*, introduced an extensive “tool box” for prevention, identifying many possible diplomatic and other approaches that governmental and non-governmental actors could take to stem

conflict escalation. In contrast to the Carnegie Commission and consistent with the UN *Agenda for Peace*, Lund argued for prevention as early action, so as to distinguish prevention from other goals that intervention might seek later in the conflict cycle (e.g., mediating a settlement, or rebuilding a society after civil war). (Lund 1996)

Many others have explored the question of prevention in an effort to create a compelling argument for national governments and intergovernmental organizations to act early rather than waiting until violence is in progress.³ For example, the Council on Foreign Relations' Center for Preventive Action conducted a study to investigate conflict prevention strategies. In summarizing the lessons of that research, Rubin and Campbell, in the introduction to the volume published by the Council in 1998, discussed the regional nature of violent conflict, in which a group of weak states become susceptible to "armed groups with cross-border ties to states, social movements, markets, criminal cartels, and corporations" (Rubin & Campbell 1998: 13–14). In such circumstances, they noted, the prevention of violence requires a regional approach, for which regional IGOs might be ideally suited. They also noted the importance of including non-governmental and civil society actors, the coordination needed when multiple international parties get involved, and the primacy of relationships between people in building sustainable policies and institutions that can manage conflict and prevent violence.

Similarly, Schnabel and Carment (2004) identified the preventive role that regional IGOs can play in confronting their member states with the need to tolerate internal differences, to build national unity and keep such differences from generating violence. On the other hand, they cautioned that regional organizations risk becoming captive to the local hegemon, distorting its agenda to favor these more powerful states and thereby losing legitimacy with their members. Therefore, in their view, the UN must be part of regional prevention to provide oversight to help regional organizations retain their impartiality and uphold international norms.

Another extensive set of case studies on the role of the UN and regional organizations in conflict prevention was undertaken by Connie Peck as part of the Carnegie Commission's research project (Peck 1998). After reviewing the

³ For example, see Rubin, B. (ed.) (1998) *Cases and Strategies for Preventive Action*. New York: The Century Foundation Press; Leatherman, J. et al. (1999) *Breaking Cycles of Violence: Conflict Prevention in Intrastate Crises*. West Hartford, CT: Kumarian Press; Hampson, F.A. and D.M. Malone, eds. (2002) *From Reaction to Conflict Prevention: Opportunities for the UN System*. New York: International Peace Academy; Schnabel, A. and D. Carment, eds. (2004) *Conflict Prevention from Rhetoric to Reality*. Lanham, MD: Lexington Books. Also, the genocide in Rwanda spurred an international commission to propose an international "responsibility to protect" civilians from the abuse of their governments, and new UN resolutions to prevent genocide and mass atrocities. See "Report of the International Commission on Intervention and State Sovereignty." (2001) Ottawa: International Development Research Centre.

contribution of several IGOs, Peck proposed setting up a set of “regional centers for sustainable peace,” which would build upon the strengths of the UN, regional IGOs, and civil society actors in playing a prevention role. As she notes, each of these groups alone has weaknesses that can seriously undermine their preventive diplomacy capacities. However, working in tandem, the prevention agenda could be strengthened to provide better analysis, more creative approaches, and access to both substantive and political expertise to help all parties within the region.

From this research, it is clear that conflict prevention often requires a multi-level approach that draws upon the resources and skills of many different actors. It is rare that one institution or individual acting in isolation is sufficient to convince/deter/enable conflicting parties to choose non-violent means to settle their dispute. However, one entity has to anchor the effort; the mediation literature is quite clear that a lead actor is necessary to prevent multiple interventions from acting at cross-purposes and thereby undermining any possibility of success (Crocker et al., 1999). This study chose to look at IGOs and their capacity to fill that role, in large measure because of the reference point provided by the OSCE’s pioneering attention to prevention when setting up the office of the High Commissioner on National Minorities. Although that office focuses on conflicts generated by majority-minority group relations, our interest was in testing whether its procedures could be generalizable to other types of intra-state political conflict.

Research Methodology

To build upon these existing data from theory, policy, and practice, we proceeded in several steps:

- First, we reviewed existing studies of the HCNM approach, to more fully explore the strengths and weaknesses of its working model of preventive diplomacy.
- Second, we used this review to generate a set of questions to frame a comparative analysis, oriented around conditions that seemed to be correlated with effective prevention practice of the HCNM.
- Third, we re-evaluated the HCNM model, developing a more fine-grained assessment of its approach by using the comparative analysis framework to study a new set of HCNM cases, two of which were not included in the original review.
- Finally, we analyzed the similarities and differences between the HCNM approach and that of other IGOs, to refine our hypotheses about the elements of successful preventive diplomacy, and to determine how/whether IGOs other than the HCNM could benefit from adopting some of its practices.

Our initial review of the HCNM model relied on three primary resources: the extensive case studies of the High Commissioner's work in Estonia, Latvia, Romania, and Ukraine, published by the Center for OSCE Research at the Institute for Peace Research and Security Policy at the University of Hamburg in 2002–3; Walter Kemp's edited study entitled *Quiet Diplomacy in Action*, commissioned by the HCNM office, that briefly reviewed 20 situations in which the HCNM's intervention took place; and Steven R. Ratner's analysis of the HCNM's work as it relates to ethnic conflict prevention and international law.⁴ The University of Hamburg case studies were particularly helpful because they were prepared by researchers with extensive knowledge of each country who enjoyed direct access not only to the High Commissioner and his staff but also to officials and others on the ground in each case with first-hand knowledge of the engagements. Ratner's work was also crucial in framing the HCNM approach as "normative mediation," which led to our incorporating many elements of negotiation and mediation analysis in our analytic framework.

Based on this review, we noted three categories of variables that appeared to explain the HCNM's successful outcomes: Institutional, Procedural, and Individual:

- The **Institutional** category included qualities of the IGO itself – if and how it prioritized prevention, what aspects of its charter or other authorizing documents spelled out a prevention mandate, whether more specific mandates were given in particular cases, and whether there was a normative framework that underlay its prevention work.
- The **Procedural** category looked at the specifics of the approach taken in implementing preventive diplomacy: strategies adopted, ways in which organizational or other norms were invoked, leverage called upon, cooperation/coordination with other international actors, etc.
- At the **individual** level, the personal characteristics and experience of the HCNM himself⁵ were explored: past experience, stature and reputation, personal style, and extent of professional networks and relationships.

⁴ Center for OSCE Research Working Papers, http://www.core-hamburg.de/CORE_english/pub_workingpapers.htm; Kemp, Walter, "Quiet Diplomacy in Action: The High Commissioner for National Minorities," Office of the High Commissioner for National Minorities and the Ford Foundation, 2001, www.osce.org/hcnm/78633; Ratner, Steven L., "Does International Law Matter in Preventing Ethnic Conflict?" *New York University Journal of International Law and Politics*, vol. 32, no. 3, 1999.

⁵ In principle, of course, the HCNM could be male or female. However, all three of those appointed to the position to date are men, so we will use masculine or neutral pronouns throughout.

Table 1. Comparison of IGO Approaches to Conflict Prevention: Framing Questions

Level of analysis	Research questions
Historical/political Context	<ul style="list-style-type: none"> • Brief historical background to situate the engagement of the third party • Conditions immediately leading up to such engagement
Institutional	<ul style="list-style-type: none"> • Is there an explicit CP mandate? • Implications of restriction (if any) of mandate (i.e. HCNM mandate is restricted to “national minorities”) • Extent to which mandate touches root and proximate causes of conflict <ul style="list-style-type: none"> – Capacity of IGO to address root causes (i.e. expertise, other relevant departments, complementary programming/projects) – Implementation/coordination of complementary programs (if any) • Impact of institutional context on the legitimacy of the engagement <ul style="list-style-type: none"> – (i.e. OSCE and its normative frameworks) • CP-related department(s); dedicated to CP or not; staff (number, background, experience etc.) • Nature of CP support available: information-gathering; analysis; early warning (external partners, local contacts, openness to/collaboration with civil society); issue experts (i.e. assist in formulation of HCNM recommendations) • Overall capacity of the organization • What institutional traits (if any) permit and/or facilitate the IGO/3rd-party actor to use suasion, leverage, and coercion? • Expertise of staff • Hiring practices • Support from/coordination with resident OSCE, UN or similar Mission • Why governments accept/reject engagement; is sovereignty an obstacle?

Table 1 (*cont.*)

Level of analysis	Research questions
Procedural	<ul style="list-style-type: none"> • To what extent is the mandate (if any) operationalized? <ul style="list-style-type: none"> – How is action undertaken in absence of specific mandate/sanction? • Nature and impact of diplomatic engagement and related projects/activities • Preparation (preparedness/willingness to act when opportunity comes) • Point of entry; duration of engagement; point of exit • Recognizing windows of opportunity: fluidity in host environment • Sustainability of gains from engagement • Extent to which timing, contact and entry are dictated by institutional or individual considerations • How suasion/leverage/coercion are chosen and used; effectiveness of such use • How and to what extent civil society is engaged; management of media and public perceptions • Nature of relationship between member States and CP mechanism/actor (i.e. consultation, reporting etc.) • How have the organization and actor developed/maintained legitimacy? (i.e. building trust, demonstrating expertise; sequencing of contacts e.g., HCNM missions) • Management of in-regional neighbors, especially regional hegemon, kin states of internal ethnic groups (i.e. kin-states for HCNM; interstate relationships) • Role of international actors and impact on 3rd-party activities • How/if a normative framework is used to frame the engagement; if so, what are its elements • Extent to which interactions are confidential (i.e. “quiet”)
Individual	<ul style="list-style-type: none"> • Background, experience with and relationship to organization and its members • Process through which (and with what criteria) person is chosen; influence of membership on selection • Approach of 3rd-party actor vis-à-vis mandate (i.e. liberal/conservative interpretation; uses to fullest extent?; effectiveness within mandate; inclination to expand, and if so, how; degree of success) • Overall expertise and intervention philosophy of individual; management style both externally and internally • Ability of 3rd-party actor to mobilize other relevant actors, orgs, internal departments, facilitate processes etc. to this end • Importance of individual in establishing/maintaining legitimacy of the engagement

The analyses we reviewed to generate these questions also highlighted a need to more deeply understand the HCNM model itself, including the effects of other outside actors on HCNM prevention efforts, and the extent to which the potential for EU membership affected the HCNM's success. To investigate such issues, we chose three HCNM cases for further study:

1. Further analysis of **Ukraine**,⁶ since the Center for OSCE Research suggested that this case might not have been the success it was initially considered to be. In particular, we were interested in understanding the root causes of the tensions there and the extent to which these were addressed, the role of external actors such as Russia, and issues of timing, as the HCNM moved in and out over a period of seven years.

When the USSR collapsed in 1991, Ukraine, one of its wealthiest and most influential republics, gained independence. Relations between Russia and the Ukraine were strained as tensions mounted within the state between ethnic Russians, ethnic Ukrainians, Crimeans and Crimean Tatars. The HCNM became involved in February 1994 at the invitation of the government. He focused on three main sources of tension: “relations between the Russian minority and the Ukrainian majority inside Ukraine; the status of Crimea within Ukraine; and the resettlement of the Crimean Tatars” (Kachuyevski 2012). He was successful in preventing Crimean secession by helping to broker an autonomy arrangement for Crimea. He was only partially successful in getting the Ukrainian government to ease its language laws against the use of Russian, and to recognize the rights of the Tatar minority.

2. HCNM in **Georgia**: This case was included because Georgia was not slated to become a member of the EU, and therefore the HCNM lacked a major “carrot” that was available to him in other cases.

HCNM Van der Stoel's first visit to Georgia was in 1997 when the Government of Georgia (GoG) requested the HCNM's help with Abkhazia, which was seeking separation from Georgia. However, Van der Stoel declined to engage on this issue on the grounds that there were already many other international actors (i.e., UN and an OSCE mission) involved as intermediaries. He later similarly declined to become involved in the South Ossetia conflict.⁷ There was also some question as to whether the separatist movements were using “terrorist” tactics

⁶ This case is presented in detail in this volume: “The Possibilities and Limitations of Preventive Action: The OSCE High Commissioner on National Minorities in Ukraine” by Angela Kachuyevski.

⁷ In recent years, the HCNM office has begun working on language rights in Abkhazia. (Ekeus 2005) The HCNM was also involved in a Human Rights Assessment Mission for the OSCE to South Ossetia in 2008 (Office for Democratic Institutions and Human Rights 2008).

against the state, which would have precluded HCNM engagement (confidential interview, 2001).

The HCNM was much more active with the Meshketian Turks, a group of Muslim Georgians that had been deported by Stalin to Central Asia in 1944. Conflict arose over their repatriation to Georgia, particularly in the Samtskhe-Javakheri region in the southern part of the state. This situation was exacerbated by the politically marginalized Armenian minority living in these same regions, who opposed the return of the Turks. Van der Stoel convened meetings to discuss these problems, ultimately setting up a monitoring mechanism to provide early warning of any rising tensions in the region, and initiating programs to help with integration of the Armenian minority into the political and social life of the country.

3. HCNM in **Macedonia**: This case was important because of extensive UN as well as OSCE intervention, and because the HCNM remained involved over an extended period of time.

The HCNM became involved in Macedonia in 1993, when the international status of the country was still uncertain and the security situation in southeastern Europe remained unstable. Politics were polarized along ethnic lines, and in particular the Albanian minority (approximately 22 percent of the population) was aggrieved by what they perceived as policies that made them second-class citizens. For their part, Macedonians were wary of tenuous relations with their neighbors and foresaw internal instability if Albanian demands were met. The HCNM visited Macedonia more than fifty times during his tenure and met with a wide range of stakeholders, from senior national officials to leaders of small minority groups. His interventions were notable for their breadth and specificity – for example, when an Albanian university was founded without the consent of the government, he engaged in activities as diverse as fundraising, law drafting, mediation and crisis management.

Other Selected Cases

The second set of cases was chosen in order to contrast with the HCNM. We searched for cases that involved true preventive diplomacy – i.e., before violence occurred where the stated or implicit goal was to prevent such violence. We found four such cases: the Secretariat of the Organization of American States (OAS), based in Washington, DC, engaging in Guyana in 2006 to prevent election violence; the Secretary-General and his Good Offices Unit of The Commonwealth, based in London, and its role to prevent further violence after the coup in Fiji in 2000; and the Special Representatives of the Secretary-General (SRSG) of the United Nations in Burundi, Macedonia and Afghanistan. The Commonwealth provided an interesting insight into a non-regional organization, but one that

considers itself a “family” of nations based on similar language and political customs, in addition to some shared histories. The United Nations is an important point of comparison because of its prominence as an IGO mediator (Bercovitch 2007).

A brief synopsis of these cases follows:

4. OAS in **Guyana**: Considered a successful case of prevention, using election monitoring as a point of entry and leverage.⁸

Ethnic tensions between Guyana’s Indo-Guyanese and Afro-Guyanese stem from Dutch and British colonization, and they have been largely institutionalized in the country’s two main political parties, the People’s Progressive Party (PPP) and the People’s National Congress (PNC). The three national elections prior to 2006 in Guyana (1992, 1997, 2001) were marked by violence between these two groups during and after the elections. The assassinations of a journalist and of a parliamentarian and his family in early 2006 amplified fears that the August 2006 elections would also be violent, prompting the Government of Guyana to invite the OAS to establish an Electoral Observation Mission. The OAS deployed two long-term observers to monitor the political situation from May to September 2006, and 123 observers for four days before and during the August 28, 2006 election (Lesser 2012). As Chief of Mission, Ambassador Albert R. Ramdin, Assistant Secretary General, made multiple trips to Guyana and spearheaded the observation and mediation processes. This was in concert with other efforts by the UN and the Carter Center. The elections proceeded without further violence.

5. The Commonwealth in **Fiji**: One of the earliest efforts of the organization to engage in preventive diplomacy, and considered a success.⁹

The Republic of Fiji experienced an armed coup in 1987 and again in 2000. Led by a group of ethnic Fijian extremists, the 2000 coup deposed the democratically elected government and the country’s first Fiji Indian Prime Minister. The Prime Minister and his cabinet were held hostage for 56 days and the constitution was abrogated. The Commonwealth Secretariat is required to take action if a member state’s democratically elected government is overthrown, and it quickly engaged with the coup leaders and former government, aiming to secure the release of the hostages unharmed and facilitate the restoration of democratic government and the rule of law, as well as promote reconciliation and national unity. It succeeded by strongly and publicly invoking “Commonwealth principles” and indirectly threatening censure if democratic rule was not restored. This

⁸ Presented in detail in this volume: “Preventive Diplomacy Work in the Organization of American States (OAS): The 2006 Elections in Guyana,” by Taryn Lesser.

⁹ Presented in detail in this volume: “Conflict Prevention in the Commonwealth: The 2000 Fiji Coup,” by Craig Collins and Jon Fraenkel.

led, along with several important rulings of the Fiji High Court, to new elections in 2001 and a return to the good graces of the Commonwealth.

6. The UN in **Burundi**: Considered a successful case of prevention.

During a coup in October 1993, Burundi's first democratically elected president was killed by Tutsi extremists. This led to reprisal killings and general ethnic violence (estimates on number of dead vary, but it was as many as 100,000 within the year and was called genocide in a 1996 UN report) (S/1996/682 1996). The French were the quickest to react, sheltering the ousted government in their embassy, although they did not send troops. The standoff was urgent enough that UNSG Boutros Boutros-Ghali sent a fact-finding mission immediately, followed by Amb. Ould-Abdallah as the SRSG about a month later. It was unclear at the time if the massacres were isolated incidents or were the beginning of a civil war. Ould-Abdallah initiated contact with a wide variety of actors, both in political and civil society circles. With great political skill, he was successful at reconstituting a government, but the 1994 deaths of the Burundian and Rwandan presidents brought the government to a crisis point once again. Ould-Abdallah's priority was to help Burundi use the ninety days allowed by the constitution to choose a new president, and to do so before the country was overwhelmed by the impact of events in Rwanda. He therefore threw his support behind some kind of power sharing, such as was eventually embodied in the Convention of Government that was signed in September 1994, almost one year after the coup. Ultimately, all but one opposition party signed the document. The main significance of the convention, besides a commitment to promote peace, stability, and reconciliation, was the power-sharing arrangements between the representatives of the two main communities and the commitment to develop policies based on consensus (Ould-Abdallah 2000).

7. The UN in **Afghanistan**: Considered a failure of prevention.¹⁰

In 1988 the Geneva Accords formally ended the Soviet invasion of Afghanistan, with Gorbachev agreeing to withdraw troops. The initial UN mission in Afghanistan had a mandate of monitoring this withdrawal, as well as coordinating refugee and aid flows. It quickly became clear, however, that the situation was rapidly evolving into a civil war between the government and the mujahidin, who in turn were subdividing according to clan and ethnic loyalties. The UN Secretary General expanded his role, via a personal representative, to try and prevent a civil war, but UN progress was stymied by continued arming of rival factions by the U.S., Soviet Union, and Pakistan, and by refusal of the mujahidin to

¹⁰ Presented in detail in this volume: "The Slide from Withdrawal to War: The UN Secretary General's Failed Effort in Afghanistan, 1992," by Dipali Mukhopadhyay.

tolerate accommodation with the remnants of government put in place by the Soviets.

8. The UN in **Macedonia**: An opportunity to compare the work of the HCNM with that of another IGO in the same case context.

The Macedonian President Kiro Gligorov requested UN assistance in border monitoring and protection in 1992, as neighboring states were falling into chaos. The UN response was to authorize the UN Protection Force (UNPROFOR), already based in Croatia, to establish a force inside Macedonia (S/RES/795 1992). Recognizing that this mandate did not include the ability to address internal concerns, it was expanded in 1994 to “encourage the Special Representative of the Secretary General . . . to use his good offices as appropriate to contribute to the maintenance of peace and stability” within the country (S/RES/908 1994) to address the simmering tensions between the Macedonian majority and the Albanian minority. The SRSG, along with the HCNM, an OSCE long-term mission, and a UN preventive military deployment were successful in stemming both external and internal sources of violence.

Four of these case studies are presented in great detail in this volume, one from each of the IGOs we studied. The others are not given in narrative form here, but the data from these were used in the comparative analysis that follows below. *It is important to note that these are all retrospective case studies.* We did follow up to see what has happened in each context since the preventive diplomacy took place, in order to explore how long and to what extent the prevention effort curtailed violence. But our primary focus is on how the IGO first got involved and the specifics of its work on the ground at the time of its initial engagement in each instance.

We define successful preventive diplomacy by referring to the two types of prevention identified by the Carnegie Commission report – operational (immediate) and structural (long term). Operationally, we therefore refer to short term or minimal success, in which violence was stopped from immediately escalating (i.e., in the ensuing 6–12 months); and long term or optimal success, in which violence was prevented from erupting in the medium or longer term.

According to these criteria, all of our cases except Afghanistan were examples of at least minimal success, achieving short-term operational prevention. Guyana, Macedonia, and Ukraine have been longer-term successes – although whether or not this is due to true “structural” prevention will be discussed below.

The High Commissioner on National Minorities as a Model of Prevention

The High Commissioner on National Minorities (HCNM) of the Organization for Security and Cooperation in Europe (OSCE) was created in 1992 because of

the war in Yugoslavia and fears of its spread to other parts of Europe. It was conceived of as a conflict prevention mechanism, attempting to address the concerns of both governments and minority groups before such concerns escalated to violence (Chigas et al., 1996).

‘Early’ is a key word in the HCNM’s mandate:

To provide ‘early warning’, and as appropriate, ‘early action’ at the earliest possible stage in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but . . . have the potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between participating States . . . (Kemp 2001: 12).

The position thus has a twofold mission: first, to try to contain and de-escalate tensions and, second, to act as a “tripwire,” meaning that the office is responsible for alerting the OSCE whenever such tensions threaten to develop to a level at which they cannot be contained with the means at the HCNM’s disposal. Even though the mandate places the High Commissioner’s work first and foremost in the category of short-term conflict prevention, the HCNM cannot, if he wishes to be effective, overlook the important long-term aspects of the situations confronting him.

The High Commissioner may collect information “from any source”, and is authorized to “pay a visit” to the participating State in question and communicate directly with national, regional and local authorities, as well as “representatives of associations, non-governmental organizations, religious and other groups of national minorities directly concerned and in the area of tension.” (Helsinki Document 1992, paras 11, 26, 26a, and 26b) He is expected to act independently of all parties and respect the confidential nature of information obtained. During a visit, the High Commissioner may “discuss the questions with the parties, and where appropriate promote dialogue, confidence and co-operation between them” (Helsinki Document 1992, para. 12).

Although the Senior Council can request and provide a mandate for the HCNM to become involved in a particular situation, it cannot give the High Commissioner instructions, nor can it overrule him. Nor is HCNM engagement predicated on formal consent of the participating State concerned, although the High Commissioner is obliged to provide the State with information about the intended purpose of a prospective visit (Zaagman and Zaal 1994:120).

Possible Advantages of the HCNM Mandate

Given this review, the HCNM appears to have several points of comparative advantage over other IGOs because of his mandate. First, the HCNM is the only IGO we studied whose mandate explicitly states that conflict prevention is its primary goal. The HCNM also has a broad mandate, though he is limited in that he can only focus on issues related to national minorities and cannot work with any groups involved in terrorist activities. He is also limited by the fact that he

can only address situations that might lead to international armed conflict or cause instability between states (Packer 2001: 645–646). In addition, the HCNM's mandate explicitly allows him to enter into a potential conflict situation at his own initiative, without the consent of the host government. The main consequence of this provision is that he can engage well before these situations become crises.

In the following section, we explore whether these in fact were advantages, and how other IGOs fared without the benefits of an explicit and broadly permissive institutional imperative for conflict prevention.

Comparative Findings

We have grouped our findings under the three categories of variables used to analyze the cases: Institutional, Procedural, and Individual. As will be evident, these are not mutually exclusive but very much interrelated, with the Procedural elements often being an extension of both the Institutional opportunities and constraints as well as the Individual style and skills of the lead person in each engagement.

Institutional Contributions to Success and Failure

In this category, we were especially interested in understanding how the explicit mandates for conflict prevention, both general and specific, enabled or constrained preventive diplomacy. General mandates are contained in the charter or founding documents of an organization and specific mandates are those designed for a single case or problem.

We found that the mandate had an impact on effectiveness in three ways: to define the basis and scope of the authority to intervene; to set the parameters for the timing of the intervention, whether before or after violence had occurred; and to provide the normative reference points for a prevention strategy, which may subsequently be used as leverage to induce government action.

1. Mandates and Conflict Prevention Authority

The HCNM:

In Georgia, the government requested Van der Stoep's assistance with the Abkhazia and South Ossetia conflicts, but because, as noted, there was some question as to whether the separatist movements were using "terrorist" tactics against the state, the HCNM confined his focus to the less volatile situation with the Meshketian Turks and Armenians.

In Ukraine, the HCNM concentrated on the multiple conflicts within the state involving Crimean separatist claims, language rights of the Russian minority,

and the repatriation of the Crimean Tatars. However, van der Stoel's mandate left him unable to directly engage the larger problem of relations between Ukraine and Russia. As Kachuyevski points out, the success of the HCNM's efforts to broker an autonomy agreement between Crimea and Ukraine was due in part to quiet discussions he had with the Russian government, and their subsequent decision not to support Crimean separatists. However, if Russian interests had cut in the other direction, the HCNM's efforts might not have been effective (Kachuyevski 2012).

In Macedonia, this limitation was not a problem because the crux of the conflict (Macedonian-Albanian relations) was squarely within the HCNM's mandate. In fact, while Macedonia did not ask for assistance, the government did work with the HCNM when he arrived. A very interesting finding is that the Macedonian government seemed to resent the interference of the UN in its internal affairs, but worked well with Van der Stoel for many years (case notes on Macedonia).

Thus the HCNM focused his attention on either less volatile situations or on earlier stages of conflict. This can be positive in that it forces the HCNM to engage early, thereby reinforcing his overall conflict prevention function. However, it also means that conflicts other than those relating to minority issues (e.g., other types of competition for economic or political resources, regional power politics), which could potentially be violent, are not directly accessible to him.

OAS:

Although the OAS does not have an explicit mandate for conflict prevention, it has become one of its top priorities, reflected in documents relating to the protection and promotion of democracy, strengthening the rule of law, and protecting human rights. In the case of Guyana, the rationale for intervention came from Resolution 1080 and the Washington Protocol,¹¹ both of which call for immediate action when the democratic political process or the power of a democratically elected government is threatened. It is supported by the Inter-American Democratic Charter, which allows a member state to request assistance when its government is concerned that "its democratic political institutional process or its legitimate exercise of power is at risk" (Lesser 2012). However, this focus on the democratic process meant that the main priority for the mission in Guyana was election observation, with a possible prevention goal of improving relations

¹¹ OAS Resolution 1080, adopted in 1991 in Santiago de Chile, requires the Secretary General to convene a meeting of the Permanent Council within ten days of "any occurrences giving rise to the sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically elected government in any of the Organization's member states" (AG/RES. 1080 (XXI-O/91) 1991). The Protocol of Washington, adopted in 1992, amends the OAS charter to allow the OAS General Assembly to suspend by a two-thirds vote a member state whose democratically elected government has been overthrown by force. (Protocol of Washington 1992).

between political actors as only a secondary priority. In addition, the OAS must be invited to engage and cannot initiate actions independently.

Engagement by the OAS is also based on decisions of the Permanent Council, and there are various political factors that can influence their votes. Ultimately, as Lesser explains, it is a state-run organization that is bound by members' politics, and it does not have an independent organ like the HCNM to initiate its own investigations and decisions (Lesser 2012). Ironically, these limitations on the OAS mandate may have contributed to the Government of Guyana's comfort with asking for assistance in the first place and their willingness to work closely with the OAS for the duration of the mission.

Commonwealth:

The Commonwealth has no constitution or charter, nor does it possess an executive branch or capacity to impose binding obligations on any of its members. However, formal procedures, standards, principles and criteria for membership have been defined by a series of resolutions. Mainly, the Secretariat is required to take action if a democratically elected government is constitutionally overthrown, and to try to facilitate the restoration of democracy with actions including public statements, mediation, and other diplomatic measures (Collins & Fraenkel 2012). The agreement reached among member states in the Coolum Declaration further authorized the Secretariat to focus on conflict prevention and post-conflict capacity building.¹²

In the case of Fiji, the elected government was overthrown, opening the way to Commonwealth action. Fiji did not request an intervention, but because it was important to Fijian leaders to be members of the Commonwealth, they were willing to work with the Commonwealth when engagement was proposed in order to try to prevent the imposition of sanctions or suspension of its membership. According to Collins and Fraenkel, these concerns, as well as the Commonwealth's good reputation as an intermediary, gave it legitimacy and high-level access (Collins & Fraenkel 2012).

However, even the mandated authority of the Commonwealth may be short-circuited. The Commonwealth Ministerial Action Group (CMAG) is the body composed of eight rotating foreign ministers of member states whose purpose is to ensure compliance with the Commonwealth's fundamental political values, assess infringement of the Harare principles,¹³ and recommend collective action when

¹² The Coolum Declaration was a product of a summit between member states in Coolum, Australia to discuss "The Commonwealth in the 21st Century." "We are committed to strengthening the Good Offices role of the Commonwealth Secretary-General and have agreed to strengthen the Commonwealth's work in supporting democratic practice, in resolving tensions, in conflict prevention and resolution, and in post-conflict rebuilding, working in consultation with regional organisations as appropriate." (Commonwealth Secretariat 2002)

¹³ The Harare Declaration, adopted in 1991, reaffirmed member states' commitment to the 1971 Singapore Declaration of Commonwealth Principles: "international peace and order, global economic devel-

needed. If a state deviates seriously from these principles and intervention by the Secretary-General or his envoys is not successful, he may refer a state to CMAG for punitive action. However, CMAG has no staff, budget or enforcement mechanisms of its own and thus must rely on consent of the member states for action.

UN:

The UN's overarching mandate is to maintain international peace and security, as asserted in Article 1 of its charter and with Articles 2(4) and 2(7) as significant restraints.¹⁴ The scope of Article 1(1) is expansive, including

tak(ing) effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

In addition, Chapter VI of the charter calls upon state parties to pursue “*pacifc settlement of disputes,*” which includes bringing disputes to the attention of the UN Security Council to “*recommend appropriate procedures or methods of adjustment.*” (UN Charter, Article 36)¹⁵ To implement such pacific means, the UN Security Council passes resolutions that provide detailed mandates that are situation-specific.

In **Macedonia**, the UN response to Macedonia's request for assistance was to authorize the UN Protection Force (UNPROFOR), already based in Croatia, to establish a presence inside Macedonia (S/RES/795, 1992).¹⁶ Recognizing that this mandate did not include the ability to address internal concerns, it was expanded in 1994 to “*encourage the Special Representative of the Secretary General . . . to use his good offices as appropriate to contribute to the maintenance*

opment, and the rule of international law . . . the liberty of the individual under the law, equal rights for all citizens, and the individual's inalienable right to participate by means of free and democratic political processes . . . [opposition to] all forms of racial oppression . . . human dignity and equality . . . economic and social development” (Commonwealth Secretariat 1991).

¹⁴ Article 2(4) of the UN Charter states: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” Article 2(7) reads: “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”

¹⁵ These include seeking “a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.” (UN Charter, Article 33) The UN is also authorized to use enforcement means under Chapter VII of the Charter, when the pacific means do not work and the threats to international peace and security are considered substantial.

¹⁶ UNPROFOR was originally established by SC Res. 743, 1992.

of peace and stability” within the country (S/RES/908 1994). The phrase “as appropriate” granted wide latitude, and in particular led to the deployment of both military and civilian arms of the mission (Ostrowski 1998: 807–808). UNSC Res 985 in 1995 transferred this mandate for Macedonia into a separate mission, called the United Nations Preventive Deployment Force (UNPREDEP). UNPREDEP had a broader mandate than UNPROFOR, and allowed for diverse activities such as monitoring, dialogue facilitation, humanitarian relief and dissemination of information to the public (Sokalski 2003).

Initial engagement was based on the Government of Macedonia’s request for a UN presence. The invitation by the Macedonian government along with the latitude granted in the mission mandate allowed Henryk Sokalski, the SRSG for the mission, the flexibility to interpret his mandate to include structural prevention activities, such as unrestricted access to discussions with even very small parties and partnerships with aid organizations and civil society groups. However, after four years, UNPREDEP’s mandate in Macedonia was not renewed because China vetoed it in response to Macedonia’s recognition of Taiwan.¹⁷

In **Burundi**, the mandate of the SRSG was not explicitly about conflict prevention, but instead about restoring democratic institutions. It consisted of four parts: (1) to restore the democratic institutions overthrown by the abortive coup of October 21, 1993; (2) to facilitate dialogue between the parties to the crisis; (3) to establish a commission of inquiry into the events of October 1993 and the massacres that followed; and (4) to work in close collaboration with the Organization of African Unity (S/26631 1993).¹⁸ One might argue, however, that there was an implicit assumption that restoring democratic institutions was a vital component of conflict prevention.

The **Afghanistan** case study analyzes two UN missions with two different mandates. Neither explicitly mentioned conflict prevention: the first was focused on creating the political transition from Soviet occupation, and the second concentrated on preventing state collapse. The initial mission, the United Nations Good Offices Mission in Afghanistan and Pakistan (UNGOMAP), had the mandate of monitoring compliance with the Geneva Accords of 1988, the agreement between Afghanistan and the Soviet Union for the withdrawal of Soviet troops from Afghanistan.¹⁹ The UNSG was unable to obtain agreement from the Geneva

¹⁷ *An Ounce of Prevention: Macedonia and the UN Experience in Preventive Diplomacy* by Henryk J. Sokalski, Review by: Bill Hayton, *International Affairs (Royal Institute of International Affairs 1944–)*, Vol. 80, No. 3, Regionalism and the Changing International Order in Central Eurasia (May, 2004), pp. 556–557.

¹⁸ US interests prevented authorization of an armed intervention in favor of a more limited mandate, despite key players, including France and the African group at the UN, being in favor of doing more.

¹⁹ See <http://www.un.org/en/peacekeeping/missions/past/ungomap/background.html> for the text of the agreement.

Accords signatories for the renewal of the UNGOMAP mandate, so it was terminated in March 1990. In its place, he authorized a new office, the Office of the Secretary General in Afghanistan and Pakistan (OSGAP), which had an expanded mandate to “facilitate a reconciliation and transition process” as well as to “encourage and facilitate the early realization of a comprehensive political settlement in Afghanistan” (Mukhopadhyay 2012; A/RES/43/20 1988). The Soviets objected to UN interference in Afghanistan’s domestic sphere, so the mandate was the result of careful negotiation between various member states’ competing concerns. As Mukhopadhyay points out, “From this point forward, the secretary-general and his staff became involved without ambiguity in the internal affairs of Afghanistan, hoping that they might be able to facilitate a dialogue amongst the various actors on the ground to prevent the implosion of the state once the Soviets left.” (Mukhopadhyay 2012)

Analysis of mandate and authority: For all of our IGOs, their agreed-upon mandates from their member states granted them authority to intervene in a preventive capacity. Notably, not all of these mandates are in the original charter of the organization; some have evolved over time from practice or were granted only for a specific situation. In most cases, the word “prevention” did not explicitly appear, but can be inferred from the stated intentions in each case.

A surprising finding is that the scope of the granted authority is broadest for the UN, not for the HCNM. The UN is allowed to do many things in order to “maintain international peace and security,” including the use of enforcement powers when needed. The greatest constraint has turned out to be getting agreement of the permanent members of the Security Council for its preventive work, rather than limitations inherent in the Charter. The HCNM, on the other hand, is required to focus only on problems of/with national minorities; the OAS is restricted to threats to democracy; and the Commonwealth, though able in principle because of the Coolum Declaration to initiate intervention on a broader range of threats to the peace, in still primarily offering their “good offices” to establish and maintain democratic governance.

A narrow scope may mean insufficient authority to address the underlying causes of violence, and may instead restrict the IGO to more superficial, short-term issues. On the other hand, if permission of the state is required for IGO engagement, this limit in scope may make it easier for states to agree to allow them entry.

2. *Mandate and Timing of Entry*

The HCNM:

Van der Stoel routinely used early entry as an opportunity to analyze and address the root causes of complex problems before they became violent, including in Ukraine, Georgia and Macedonia. For example, he first visited Macedonia in

1993, when there were initial signs that ethnic tensions could escalate. Because of this, he was well established in the country when a potentially violent crisis over an Albanian language university did arise in 1994. His local experience and relationships made it possible for him to be instrumental in the creation of a compromise that avoided further escalation (Ratner 1999: 626). Likewise in Ukraine, he engaged as tensions were first starting to appear and was able to build relationships between parties to prevent the secession of Crimea and to somewhat diffuse concerns over language laws.

UN:

In the case of Burundi, UN entry came late, when the UN Security Council authorized an SRSG only after a coup and reprisal massacres had taken place and a civil war was underway. This late entry was due to the restriction on UN intervention when it violates sovereignty, for anything other than an enforcement action under Chapter VII; the UN therefore had to wait for a request by the recognized but deposed Burundian government officials. Some analysts have argued that, once violence had already escalated, this late entry encouraged a focus on the short-term problems in the country and a lack of recognition of the deeper root causes of the crisis – a misdiagnosis that was unable to prevent the country from spiraling into war (Rubin, Lund and Hara 1998).²⁰ Over time, the UN has remained engaged in Burundi, and its updated mandate eventually allowed it to address the inequities in the country that its earlier mission could not (UNOB 2010).

In Macedonia, the UN *was* invited in early by government officials, initially as a defense against the chaos in the region. They later allowed the mission's expansion to address the root as well as immediate causes of internal conflicts. These efforts were successful in maintaining peace, not only while the mission was in Macedonia, but also later, because of the groundwork that had been laid for the successful negotiated end to the brief 2001 civil war.

In Afghanistan, the UN's entry was by agreement of the parties as part of the Geneva Accords. In principle, this could be considered "early," in terms of coming in before violence re-escalated in the post-settlement period. Unfortunately, in this case, even having a mandate that allowed early entry and attention to underlying tensions was not enough because the UN was not able to dissuade the internal factions from believing in the benefits of war over negotiation.

²⁰ This analysis also blames failure on the disjointed international response to the crisis, due to multiple official and non-official outside parties each having only a partial understanding of Burundi's problems and no one seeing the whole picture (Rubin, Lund and Hara 1998).

OAS:

Guyana also invited the OAS in early to observe their 2006 elections out of a well-founded fear that violence would erupt. This invitation was made nine months before the election, well before any crisis occurred, and was one of the contributors to the successful prevention of violence during the elections. However, as in Burundi, the underlying causes of tension in the society have not been sufficiently addressed by the OAS or others. Unlike Burundi, this has not led to any coups, but it does mean there are ongoing fears of violence erupting in Guyana (Ghosh 2011).

Commonwealth:

The Commonwealth may intervene on its own initiative, but this option is not formally contained in any charter and has instead evolved from practice. It has now (at least partially) been enshrined in writing in the Millbrook Action Programme, where, in the case of violation of the Harare principles, and especially in the case of the unconstitutional overthrow of a democratically elected government, the Secretary-General is authorized to make “early contact... with the de facto government, followed by continued good offices and appropriate technical assistance to facilitate an early restoration of democracy.” (Commonwealth Secretariat 1995) This is more restrictive than the HCNM because a violation has to occur before action is taken (practically speaking that would be a coup), and the Secretary-General is not explicitly authorized to talk to anyone but the recognized government. In Fiji, even though the Commonwealth issued statements condemning the coup and calling for diplomatic engagement almost immediately, it (upon the decision of CMAG) did not send a mission in until almost a month after the coup had occurred.

While the Commonwealth suspended Fiji quickly after the coup in 2000 and sent a mission to engage in good offices and crisis diplomacy, this effort was aimed at resolving the immediate crisis (a hostage situation and abrogated constitution), rather than at preventing further violence. Despite the successful resolution of the hostage crisis and eventual reinstatement of the constitution, another coup occurred 6 years later (Collins & Fraenkel 2012).

Analysis of mandate and timing of entry: When an IGO has constraints written into its charter that prohibit it from involving itself in the internal affairs of another state without the permission of that state (which is the case for the OAS and for the UN under most circumstances),²¹ their representatives need to be invited. We assumed that this was unlikely to happen unless a crisis was either imminent or already occurring and therefore earlier entry is very unlikely; entry before violence takes place will happen only if the mandate of the

²¹ The notable exception is provided for in Chapter VII of the Charter; see fn 19.

IGO allows for pro-active engagement. Our cases showed that these assumptions were not always correct; the HCNM fit our predictions (i.e., early entry) as did the UN SRSG in Burundi (i.e., late entry); while the other cases did not. In all cases where early entry was possible, violence was successfully and sustainably prevented.

There is, however, a notable difference in the ability of these IGOs to address the underlying sources of tension versus tackling the immediate crisis – which is a function of the scope of the mandate rather than the time of entry. Ultimately, the IGO must be able to persuade the parties to the conflict that negotiation is a better option than violence if preventive diplomacy is to succeed.

3. *Mandate and the Norms Governing Member States*

The HCNM:

Consensus is the hallmark of the OSCE. The emphasis on consensus has engendered a cooperative approach to problems and is a key to the organization's success (Zaagman 1995). Cooperation and consensus have, *inter alia*, resulted in unprecedented OSCE access to the internal developments of its participating States (via the HCNM), a fact that suggests that an uncommon degree of legitimacy has been conferred upon the organization. In addition, the OSCE remains important in Europe by virtue of its role as custodian and promoter of common norms. The organization also serves as a focal point for the normative development of minority rights, respect for which have been acknowledged as not only an end in itself but also a means of strengthening the territorial integrity and sovereignty of the state.

In our case studies, Van der Stoel drew upon the Decalogue, a set of ten principles agreed to by all OSCE members in 1975.²² In particular, he invoked Principle #7, respect for human rights and fundamental freedoms, and Principle #10,

²² The Helsinki Final Act, Helsinki Accords or Helsinki Declaration was the final act of the Conference on Security and Cooperation in Europe held in Helsinki, Finland during July and August 1975. The meeting produced ten principles (the Decalogue) to guide relations between participating states:

1. Sovereign equality, respect for the rights inherent in sovereignty
2. Refraining from the threat or use of force
3. Inviolability of frontiers
4. Territorial integrity of States
5. Peaceful settlement of disputes
6. Non-intervention in internal affairs
7. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief
8. Equal rights and self-determination of peoples
9. Co-operation among States
10. Fulfillment in good faith of obligations under international law (CSCE 1975)

fulfillment of obligations under international law. However, he went beyond OSCE principles to develop normative reference points, which will be detailed under the Procedures analysis.

Commonwealth:

The Commonwealth's Harare Declaration and the Millbrook Action Programme commit all members to the protection and promotion of peace, order, the rule of law, economic development, racial equality and democratic political processes. The Commonwealth also derives power from its moral authority, displaying a strong commitment to its principles and consistently taking action against those who violate them. Unconstitutional regimes in Nigeria, Sierra Leone, the Gambia and Pakistan, as well as in our Fiji case, have all been willing to engage in dialogue with the Commonwealth when suspected of abrogation of these principles, even on matters relating to their sovereignty (Collins and Fraenkel 2012).

OAS:

The OAS's work in prevention is supported by the Inter-American Democratic Charter, which provides a basis for prevention by listing: "the notion of a 'right to democracy' and the obligation of governments to promote and defend it; further specification of the norms for electoral observation and democracy assistance by the OAS; and clear references for the need to take into account and promote the contributions of civil society, as well as to promote the equal participation of women in democratic processes" (Lesser 2012).

UN:

The UN draws upon several elements of its charter, notably Article 1, which refers to principles of justice and international law, equal rights and the self-determination of peoples, and respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion. In addition, the UN Secretary General often refers in his reports to the Security Council to the organization's commitment to the principles contained in the Universal Declaration of Human Rights and their implementing covenants.

Analysis of mandate and norms: What is immediately obvious is the ubiquity of human rights and democratic principles in the mandates of all of these organizations. As will be seen, these do form the framework for preventive actions, sometimes as the basis for negative judgment and sometimes as a call to take the "high road" on the part of state actors. Each IGO is different in the way it operationalizes these norms, which is detailed in the following section.

Procedural Steps: Strategy and Tactics Leading to Success or Failure

The HCNM:

When Max van der Stoel was appointed as HCNM in 1993, there were no guidelines in place about how to implement the newly created mandate. Therefore, Van der Stoel made a significant contribution by setting up an array of operating procedures for the HCNM that are the hallmarks of the office to this day.

The first of these is referred to by Van der Stoel as “*quiet diplomacy*.” “Quiet diplomacy” means not holding states up to public ridicule and shame because of their behavior, but instead using private consultations and confidential exchanges of letters to provide advice. The goal is “. . . assisting rather than isolating states that fail to live up to their commitments” (Wohlfeld 2004: 170).

In the HCNM cases, quiet diplomacy often meant discussions with the government about framing legislation that would address the grievances of minority groups, while also meeting the interests of states and complying with international laws and norms (Ratner 1999). In Ukraine, this included advising the government and Crimean authorities on language for a new Crimean constitution that would satisfy the region’s demands for autonomy without compromising the central government’s demands for unity (Kachuyevski 2012). Likewise in Macedonia, the HCNM worked with the government to craft specific legal language based on international precedents for minority education that would satisfy the Albanian minority’s demand for higher education in their native language without compromising the Macedonian government’s control over the educational institutions in its territory.

Another hallmark of HCNM procedures is the use of *norms as a source of leverage* for prevention. The intended impact is to change the preferences of states by encouraging compliance with norms as a way of gaining international and/or regional approval, and at times opening the door to political or even economic benefits. Van der Stoel made international norms a core part of his strategy to resolve incipient conflicts, and the HCNM, according to Steven Ratner, has “invoked and interpreted” the norms of the OSCE, the Council of Europe and the UN “constantly, especially if one party is seeking to ignore or mischaracterize them.” In short, the High Commissioner “uses norms to achieve solutions, and seeks solutions consistent with norms.” (Ratner 1999: 620–621)

In Macedonia, with the issue of the Albanian university, the HCNM referred to the OSCE Copenhagen Document as well as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Council of Europe’s Framework Convention for the Protection of National Minorities to establish that a government cannot deny recognition to an institution solely based on language, but also that educational institutions in non-national languages must be in accordance with national legislation and do not claim a right to public funding or automatic recognition of

their diplomas. Additionally, he referred to “recommendations of the Parliamentary Assembly of the Council of Europe, recommendations of the Council of Europe’s Higher Education and Research Committee, and the recommendations of academic experts in the form of the Hague and Oslo Recommendations” to show that the norms were principles in wide use throughout Europe (Ratner 1999: 626).

However, the text of the relevant normative documents leaves room for interpretation. It is in this regard, Ratner argues, that the HCNM has played his “most critical norm-related role: the translation of norms into practical guidance and concrete proposals for consideration by minorities and governments.” (Ratner 1999) Examples from the cases include the drafting of language legislation in Ukraine, the raising of money for the Albanian university in Tetovo in Macedonia, and the ongoing work in Georgia to provide bilingual education in the region populated by minority Turks and Armenians.

Also, the HCNM employed norms-based frameworks as a “cover” for parties following his recommendations. Some of the HCNM’s recommendations could be politically contentious or unpopular. In both Macedonia and Ukraine, the HCNM successfully used normative frameworks to legitimize the governments’ and other parties’ actions, framing them as in line with objective, well-established standards in the European community rather than politically motivated acts (Kachuyevski 2012). Also,

(if a government follows HCNM or mission recommendations, it is less likely to be accused of giving in or backing down to unfair pressure. The HCNM’s and missions’ lack of authority to bind or judge allows them to offer the parties a face-saving manner to take de-escalatory actions (Chigas et al., 1995).

Framed as such, unpopular actions were more easily accepted by the opposition and the public, and led to agreements on structural changes that are still in place today (e.g., autonomy arrangements in Crimea).

Norms, however, may not always be sufficient as a source of leverage. In Ukraine, raising concerns about the rights of the Crimean Tatars largely fell on deaf ears, subsumed by the larger issues of Crimean separatism and Ukrainian-Russian relations. In Macedonia, the HCNM used the importance of relationships with the OSCE and its member states to his advantage, on occasion providing a “gentle reminder” that a poor report could harm Macedonia’s reputation. This was especially important given the prospects of Macedonia’s being considered for entry into the EU.

A third procedural contribution to success was *impartiality* – not taking sides or favoring the interests of any one party. This may seem like an obvious characteristic needed in preventive diplomacy – but it is not one universally recognized as being important in bridging difficulties between contending parties within

states.²³ Impartiality involves making sure all stakeholders have been consulted and their interests taken into account, to the greatest extent possible, in crafting solutions. In the HCNM's case, the fact that his mandate allowed him access to all groups without having to first gain approval of a given government made it possible to talk with everyone, even those not favored by that government.

However, impartiality was challenging for the HCNM, as advising governments was not always seen as acting impartially by minority groups (e.g., in Georgia by the Armenian minority; in Ukraine by the Russian-speaking minority). Likewise, invoking international norms was sometimes resented by governments and was seen as taking the side of the minority group (e.g., the Ukraine and Macedonian governments). This is when the personal qualities of the intervener, and the relationships he/she has built over time, play a crucial role, as we will see in the discussion of Individual-level contributors to successful preventive diplomacy.

In Ukraine, the HCNM organized a roundtable in Switzerland where Ukrainian and Crimean representatives could talk outside of the spotlight and pressures of home. This provision of good offices allowed the parties to begin a process of building trust with each other, as well as building trust in the HCNM as an intermediary. The roundtable laid the groundwork for the resolution of the crisis on the status of Crimea, including recommendations for broad Crimean autonomy within the context of the Ukrainian state that was agreed to by authorities on both sides. This agreement became the basis of the governance arrangement that remains in place today (Kayuchevski 2012).

Similarly, in Georgia, Van der Stoep, and later the subsequent HCNM Rolf Ekeus, engaged directly with the Saktskhe-Javakheti Armenians, facilitating their communication with the government on language and cultural rights.²⁴ In addition, he convened two open meetings, in 1997 and 1999, including representatives of the Meskhetian Turks and international experts on repatriation issues. Given the relationships of the various minority communities to regional powers such as Russia and Turkey, the meetings included not only a broad cross-section of interested parties from within Georgia, but also representatives from Turkey, the United States and the Council of Europe. This put the issue of Meskhetian Turk repatriation onto the Georgian government's agenda, along with some incentives to address the problem, and they agreed in 1999, as a condition of

²³ Zartman and Touval, for example, have consistently argued that it is not impartiality that provides legitimacy for international mediators, but their ability to deliver an agreement to/for the disputing parties (Zartman and Touval 2007).

²⁴ In particular, the HCNM has implemented programming to make government documents, including election materials available in Armenian, as well as providing Georgian language training for civil servants in the region. See Ekeus, Rolf, Address by the OSCE High Commissioner on National Minorities to the University of Ottawa Conference, 31 March 2005.

their accession to the Council of Europe, to guarantee return for the Turks (RFE/RL 2007).²⁵

A final defining procedural feature of the HCNM is *extended engagement* – remaining involved in an ongoing effort to assist in implementing the recommendations that the HCNM himself provided. The office of the HCNM is still engaged in Georgia to this day, implementing numerous projects to help integrate the Armenian minority into the Georgian state.²⁶ In Macedonia, Van der Stoep visited the country over 50 times between 1993 and 2001, and during that extended engagement was able to work with both the government and the Albanian community to enable elements of structural prevention, discussed previously, to be built.

Other IGOS and Quiet Diplomacy, Impartiality/Inclusivity, and Extended Engagement

OAS:

The OAS mission employed a form of quiet diplomacy in its approach in Guyana. In addition to Ramdin's visits and the observers tasked with monitoring the election itself, two long-term observers were deployed to Guyana from May to September 2006. They regularly monitored the political situation and electoral process, and worked closely with the Guyana Elections Commission (GECOM). They consistently met with electoral authorities at all levels, political party members, and civil society representatives, and "their availability to provide ongoing advice and support to GECOM was crucial" (Lesser 2012). They helped the government identify areas for improvement, such as the need for GECOM to communicate better with the electorate. Like the UN in Macedonia, the OAS' approach was to work with the Guyanese government as equals. Ramdin emphasized that "observers should never enter a situation with an agenda – an 'embedded' idea of what 'should' happen, but rather should be open to what 'can' happen—based on needs of the people, normally gathered from consultations" (Lesser 2012).

In addition, Ramdin emphasized inclusivity and the importance of recognizing "key issues of concern by the opposition" (Lesser 2012). He deliberately consulted with all six political parties equally, including the more minor ones, and attempted not to show bias toward any of them. His dialogue process leading up to the 2006 elections included not only the political actors but also civil society,

²⁵ The repatriation has not gone quickly, however. It took until 2005 for the Council of Europe to discuss a resolution requesting the Georgian and Russian governments to take their responsibilities on this issue to heart (COE 2005), and until 2007 for the Georgian parliament to pass a law authorizing the repatriation. Even then, no funds were appropriated to help with the resettlement. (RFE/RL 2007)

²⁶ For more information on the HCNM's current activities in Georgia, see <http://www.osce.org/hcnm/92384>, July 27, 2012.

media and law enforcement. This level of inclusion served four purposes. First, it allowed Ramdin and his monitors to accumulate as much information as possible about the actors' principle concerns so they could suggest domestically viable solutions. Second, it distributed the responsibility for preventing violence and ensuring voter participation across many sectors of society by giving them a stake in the process. Third, the broadening of the political space allowed for a shifting of the conversation from the typically divisive, ethnicity-focused confrontations to more productive, issue-oriented discussions. Fourth and finally, the improved communication that resulted from this made the election process much more transparent than it had been in the past (Lesser 2012).

According to Lesser,

The OAS was subsequently involved in an Electoral Observation Mission during the 2011 elections, sending 25 observers from 14 countries. Additionally, the local OAS representative continues to monitor political developments in the country, sends regular updates to headquarters, and responds to requests from the government for technical support.

However, The EIU (Economist Intelligence Unit) noted that the relations between the PPP and PNC remained "openly hostile," hindering the capacity of Parliament. This was worsened by the lack of progress made on constitutional reform. While the EIU considered the risk of outright ethnic violence to be low over the foreseeable future, violent crime remained a serious problem and social rifts among ethnicities were far from healed (Lesser 2012).

Commonwealth:

Unlike the HCNM, the Commonwealth utilized a combination of public criticism and quiet diplomacy. Immediately after the coup occurred in Fiji, Secretary-General Don McKinnon condemned it publically. Five days later, he traveled to Fiji, accompanied by UN Special Envoy Sergio Vieira de Mello, to meet the coup leader and other key actors and express his concerns over the crisis, as well as visit the hostages in the besieged parliament (Collins & Fraenkel 2012). The Commonwealth Ministerial Action Group suspended Fiji's membership on June 6; however, they continued to provide technical assistance aimed at restoring democratic rule (Collins & Fraenkel 2012). While this combination of public and quiet diplomacy runs the risk of alienating a *de facto* government, it worked in this case in large part because the Fiji government wanted to stay in good standing with the Commonwealth.

However, the underlying inter-group tensions that led to the coup in 2000 are still dominating Fiji's government. Another coup occurred in 2006, and Fiji was suspended again by the Commonwealth. Ongoing efforts by the Pacific Islands Forum and the Commonwealth to restore democracy and power-sharing have not been successful.

UN:

Although Macedonia had requested the UN presence in the form of an UNPROFOR deployment to guard its borders, the expansion into UNPREDEP and conflict prevention activities, which included engagement in the country's internal affairs, was a more controversial proposition because the government was reluctant to have UN interference in domestic affairs. SRSG Sokalski explained that his team navigated this situation by taking

particular care to show that the UN presence provided a stimulating asset – rather than a handicap – to Macedonia's efforts toward peace and stability... We tried to convince Macedonia's political leaders that we came not to teach, but to share international experience... We treated our hosts as partners, not as supplicants. Impartiality was the name of our game, and it determined the degree of our credibility. Over time, this helped in easing a discernible feeling of uneasiness and fatigue among some local quarters over the apparently domineering presence of an international operation. (Sokalski 2003: 104–5)

Inclusive dialogue processes were a part of the goals of the UN mission in Macedonia. UNPREDEP operated on three “pillars”, with one pillar being devoted to good offices and political dialogue. Through this mandate, SRSG Sokalski was able to engage in direct discussions and listening sessions with parties large and small, both in and out of the mainstream (Sokalski 2003: 108). This brought all potential spoilers into the process, thus avoiding violent confrontation on contentious issues.

In Burundi, however, the UN faced a different challenge: at the time of UN intervention by SRSG Ould-Abdallah in 1993, it did not have a functioning government to which the UN could give advice. The elected president had been assassinated, and the country was in chaos. While quiet diplomacy is about subtly shaping a government's actions or responses behind the scenes, establishing a government requires visible action. According to Amb. Ould-Abdallah's account, upon arrival in Burundi, his strategy was to meet with as many parties as possible and gain their trust, as well as signal his interest and commitment in the conflict. His immediately bold approach served to demonstrate to Burundi that its conflict was not forgotten by the UN, and his subsequent willingness to take proactive measures gave him legitimacy among the leadership in Burundi, including the elders and diplomatic community with whom he consulted on a regular basis (Ould-Abdallah 200, 47).

However, Ould-Abdallah's major task was to broker an agreement between the two major political parties, FRODEBU and UPRONA, and to establish a power-sharing arrangement.²⁷ Because of this, the unofficial armed movements were not at the negotiating table. While it is likely that these armed militias were

²⁷ Front pour la démocratie au Burundi and Union pour le Progrès National.

sponsored by the main parties, their exclusion from the agreement led in part to the resumption of violence not long after Ould-Abdallah's departure (Lund 1996).

Afghanistan presented even more of a challenge to the UN. From 1988 when the Soviets withdrew their forces until 1991, both the U.S. and the Soviet Union (along with Pakistan and Saudi Arabia) continued to arm client factions within the country. In that context, the UNSG (Perez de Cuellar and then Boutros Boutros-Ghali) along with the SG's personal representative used quiet diplomacy to get wide international and Afghan agreement on a set of principles. The process was broadly inclusive, involving all of the factions within the country as well as the regional and global powers invested in the outcome. However, with extensive armaments at their disposal, the increasingly polarized factions within the country preferred to fight for dominance rather than agree on a political arrangement. Unfortunately, the UN did not have the required leverage to change their calculus (Mukhopadhyay 2012).

In addition, as soon as the opposition groups thought that SRSG Sevan was not impartial, he lost all credibility with them. As a condition of convincing President Najibullah to step down (which was the major demand of the opposition groups), Sevan had agreed to give Najibullah safe passage out of the country. This plan was foiled by a mujahidin commander "[laying] siege to the airport from which he was to fly" (Mukhopadhyay 2012). Najibullah was granted safe haven in the UN compound, and "it would prove very difficult, from that point forward, for any other players to view Sevan as disinterested" (Mukhopadhyay 2012).

Norms as Leverage

OAS:

In the case of Guyana, the OAS and GECOM (the Guyana Elections Commission) signed a formal agreement based on the Inter-American Charter, stating that the member state shall "guarantee conditions of security, free access to information, and full cooperation with the electoral observation mission" (Lesser 2012). Additionally, the OAS made frequent referrals to the importance of a free and fair democratic election for Guyana, and Ramdin made clear to the parties that the OAS and the international community were watching and would not accept an election boycott (Lesser 2012) though what the consequences would be were unclear. Consistent reference to these norms and guidelines made OAS expectations for the democratic process explicit, and emphasized the fact that the international community was watching the situation and that Guyana's reputation within the OAS would be damaged if violence broke out.

Commonwealth:

The Commonwealth also made frequent references to the shared norms of member states when attempting to influence the coup leaders. It explicitly made its

position known, stating, “We insist the Harare Declaration must be upheld. The armed overthrow of the democratically-elected government is fully unacceptable to the Commonwealth” (Collins & Fraenkel 2012). This made it clear that Fiji was not in good standing with the Commonwealth, and if it wanted to continue to participate, it needed to make some changes. Fiji’s membership in the Commonwealth has long been important to both ethnic Fijian and Fiji Indian leaders, and its return to the Commonwealth in 1997 (after its expulsion in 1987) was widely acclaimed by both sides. There was, of course, an implied threat here as well: if the Fijians couldn’t work something out, they would be expelled once again.

UN:

The UN attempted to invoke norms, albeit indirectly, in both Burundi and Afghanistan – by endeavoring in both instances to set up government institutions that were representative of multiple political groups and encouraging settlement of differences by political means. However, in both cases, the violent alternative proved more persuasive – immediately in the Afghanistan case and after a brief respite in Burundi.

Analysis of strategy and tactics: The most notable elements of successful strategy, across all of the cases, are impartiality, inclusivity, and effective use of leverage. These, in turn, are the hallmarks of effective mediators. It is self-evident that the implementation of successful preventive diplomacy requires excellent mediation skills.

One of the differences across the cases is the extent to which norms are used as a source of leverage. The HCNM’s strategy has explicitly developed this as a powerful tool, while the others have used it but with less intentionality. This may be an area where the experience of the HCNM can inform other IGOs.

Individual-Level Variables and Prevention

The HCNM:

The personal stature and spirit of Max Van der Stoel caused us to ask whether individual characteristics make a significant contribution to the success of preventive diplomacy. First, of course, his personal integrity as someone universally well-respected and trusted was augmented by his coming from a small country with no perceived political agenda or ax to grind. Second was his extensive experience as both a diplomat and a politician, having served as foreign minister of the Netherlands and UN special human rights envoy to Iraq before becoming the first HCNM in 1992. This experience helped him frame arguments and recommendations pragmatically and realistically, in the language of political leaders.

Perhaps most significantly, Van der Stoel’s dedication to justice and human rights led him to frame the role of the HCNM as one of a “normative mediator,”

as Steven Ratner has so eloquently noted. Nothing in the HCNM's mandate explicitly states that the office should use norms as justifications for action, but Van der Stoel drew upon not only the OSCE principles but also any and all regional and international frameworks that would convey to leaders the moral and ethical responsibilities they carried. This visionary interpretation of the HCNM's role has placed a lasting imprint on the office.

Not every government or minority group leader appreciated Van der Stoel's dedication to these normative principles, or followed the carefully crafted and extensive recommendations he offered in his signature "exchange of letters" with heads of state. But his energy and dedication to the HCNM mission were legendary – notable in particular in his inexhaustible commitment to Macedonia, but also in taking on three separate simultaneous conflicts in Ukraine.

Other IGOs:

The array of diplomats in these case studies is both diverse and exemplary: Albert Ramdin in Guyana; Don McKinnon and Pius Langa in Fiji; Amedou Ould-Abdallah in Burundi; Henryk Sokalski in Macedonia; Diego Cordovez and Benon Sevan in Afghanistan, along with UNSGs Perez de Cuellar and Boutros-Ghali.

All were male, persons of high public stature, with extensive diplomatic experience, and personal integrity. McKinnon and Langa were also politicians, in New Zealand and South Africa respectively; both also had extensive human rights credentials, similar to Van der Stoel.

All of these men worked tirelessly once taking on their mission in each case and attended seemingly endless rounds of meetings with all concerned parties. The pro-active engagement of Ould-Abdallah and Sevan were especially noteworthy.

The nationality of these men often mattered greatly. Ould-Abdallah is from Mauritania, and his African heritage was particularly valued in Burundi. Albert Ramdin, whose origins in Suriname might have been problematic in neighboring Guyana, nevertheless knew the country well and proved himself an impartial facilitator. Don McKinnon, coming from one of the regional hegemons of the Pacific, also dispelled any suspicions of hidden agendas and showed himself to be evenhanded in Fiji. Finally, for Afghanistan, UNSG Perez de Cuellar explicitly wanted to appoint someone who was not associated with any of the parties in that country, and so appointed highly skilled negotiators with UN experience – first Diego Cordovez from Ecuador and then Benon Sevan from Cyprus.

Analysis of role of individual qualities: One insight that is clear from the case data is that individuals acting as third parties in preventive diplomacy efforts must be perceived as impartial. In part, this is a function of organizational affiliation and how skilled the IGO's agent is as a mediator. But if there is a perception that the individual is biased because of their identity or origins, they must overcome that perception in order to be effective. As noted, Ramdin and McKinnon were able to do so.

Beyond this, without having interviewed the parties to the conflicts with whom they worked, it is difficult to determine with accuracy what the personal contribution of these men was to their success or failure. One can infer, although not prove, that in complex situations, a creative and highly motivated mediator can generate significant options and inspire leaders to take risks – such as Van der Stoel in Ukraine, Ould-Abdallah in Burundi, and Ramdin in Guyana. But if parties really want to fight, as they did in Afghanistan, a skilled diplomat alone will not be sufficient to prevent violence.

Conclusions

On Mandate

We assumed that the independence and flexibility of the HCNM could only be replicated if other IGOs had similar mandates. This proved to be false. Even with limitations placed on the conditions under which IGOs could get involved in potentially violent situations, IGOs could still intervene in time to prevent violence *if requested to do so by the host government*. Even the HCNM had limitations on its entry and scope of work, preventing it from addressing regional or global dynamics that could be stoking tensions.

An argument can be made that entry into a conflict before it becomes violent makes sustainable prevention more possible. This is because the added challenges created by the fallout of violence (e.g., revenge-seeking, physical and economic destruction, extreme polarization of relations) are not part of the equation.

Here is where the mandate of the organization *is* most crucial: it can provide the authority for the IGO to enter early and at its own initiative, and it can also provide flexibility in terms of the sources of conflict it is allowed to address. To the extent that mandates limit either timing or flexibility in ways that preclude early engagement, prevention efforts can be undermined.

On Strategy and Tactics

Leverage and Prevention

Most preventive diplomacy, as now practiced by IGOs, is intended to achieve operational prevention – an immediate fix to keep violence from erupting in the near term. This is understandable, because of the lack of resources for longer-term commitments, constraints imposed by sovereignty, and the short-term political interests of member states.

In order for operational prevention by an IGO to be successful, one of two conditions must be present: either the intervention is requested, and the parties therefore are motivated to seek agreement (OAS in Guyana; UN in Burundi; HCNM in Ukraine and UN/HCNM in Macedonia); or the IGO has sufficient leverage to entice or threaten the parties into a deal (Commonwealth in Fiji).

If neither of these conditions is present, as in Afghanistan, the possibility for preventing violence is slim.

In negotiation terms, leverage is needed to influence the alternative to agreement for each of the parties, so that agreement is a more appealing option than violence. IGOs whose members value their membership, either for its own sake or to make an impression on the broader international community, can use this as leverage in the short term.

Norms can also be used as positive leverage, to remind members of their common values or to appeal to “good citizenship” more broadly. They can also be used to help with face-saving, in particular to allow governments to make concessions in service of norms rather than in response to pressure or demands from adversaries.

Sustaining Prevention

Prevention can be sustained if additional attention is paid to the underlying sources of tensions and changes are made to alleviate these tensions. This can either be done relatively quickly (the HCNM in Ukraine, with autonomy guarantees for Crimea); or may take a longer engagement (HCNM in Georgia and Macedonia with language and education rights; OAS in Guyana with election monitoring).

The most sustainable prevention occurs when the relationship between groups is not only improved, but enshrined in domestic laws and/or institutions that guarantee its continuation. The value of the HCNM approach, unlike those of any of the other IGOs, is its commitment to catalyzing these changes in laws and institutions, helping countries translate abstract values into realities, and staying engaged over an extended period of time to support these changes.

Mediation Skill

For both short term and longer term prevention, the IGO must operate with the highest level of professional mediation skill. This means: being impartial; understanding the importance of inclusion and knowing how to operationalize it; being creative in generating options; and taking a problem-solving approach, which incorporates the interests of all parties.

Impartiality is therefore not unnecessary or optional in preventive diplomacy, as the mediation literature would suggest. It is crucial for IGOs because they lack the resources to be “muscular” mediators, and therefore their legitimacy rests on their impartiality. Adherence to norms does not jeopardize impartiality, as the core imperative of norms is that they apply equally to all parties. This is the epitome of evenhandedness.

Role of Powerful States

The role of hegemons and global powers can help or hinder all of these efforts at prevention. In Ukraine, Russia’s decision not to actively support the separatist

movement in Crimea was crucial for the HCNM's ability to facilitate an autonomy agreement. In Afghanistan, the opposite occurred, with the outside powers fueling the divisions and providing the armaments that made war a preferred option.

This is an unpleasant but realistic constraint on preventive diplomacy. In the Afghanistan case, the UN PRSG tried valiantly to get everyone moving in the same direction, including the outside powers. In fact, the U.S. and the Soviet Union (by this time, Russia) did agree to stop arming their respective clients in 1991, but it was already too late.

Therefore, preventive diplomacy must begin with good analysis of the situation at hand, and a strategy that takes both opportunities and constraints into account.

Implications for Practice

In spite of the challenges, our analysis does suggest that IGOs are capable of making preventive diplomacy a more integral part of their work and turning their successes at operational prevention into longer-term efforts by adding some facets of the HCNM model. These include:

- Being more pro-active in their engagement by quietly engaging state actors when violence is a possible outcome of internal tensions.
- Creating a more robust conflict assessment capacity and being aware of where and when such escalation risks are developing and what strategies might be effective.
- Using the norms that define the organization more creatively, as an incentive for early action by states to address grievances and get credit for doing so.
- Arranging to stay engaged over a longer period, at the very least to keep a “watching brief” on simmering tensions and at most to help states change their capabilities over time to be more inclusive and pro-active in preventing violence.
- Further developing the mediation skills of their diplomats, and enhancing the capacity of the IGO itself to support these mediation functions at the highest standards of the practice.

One final note: a recent gathering of scholars and practitioners of conflict prevention discussed the challenges in the field in general, pinpointing the importance of sharing experiences for the purpose of joint learning and the crucial need for more extensive evaluation to determine “what works.”²⁸ This study is

²⁸ “Learning from Our Experience in Conflict/Violence Prevention.” Sponsored by the BEFORE Project, CDA/Collaborative Learning Projects, and the Toda Institute for Global Peace and Policy Research. Held at the Fletcher School of Law and Diplomacy, Tufts University. July 28–29, 2011.

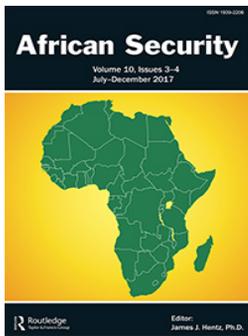
a contribution to the analysis of “what works,” based on a small sample of cases and constrained by limited resources. Future research into effective preventive diplomacy should be conducted with greater breadth and depth, to test the conclusions we have reached.

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Marching Orders: Exploring the Mediation Mandate

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ABSTRACT

This article addresses a major gap in the literature on international mediation by investigating the significance of the mediation mandate. It identifies different types of mediation mandate and examines their functions and effects. A mandate issued by a multilateral organization serves as instructions to the mediator and sets the parameters of the process and outcome of peacemaking. It can therefore have a crucial impact on the orientation, trajectory, and results of mediation. It can contribute to success by conferring legitimacy on the mediation and endowing the mediator with authority, status, and leverage. It can also impair the effectiveness of mediation by provoking tension between the mediating body and other multilateral organizations, the mediator, and the conflict parties.

KEYWORDS

African Union; international mediation; mediation mandate; regional economic communities; United Nations

Introduction

In the scholarly work on international mediation, the mediation mandate is recognized as a salient issue but has not been the subject of any systematic analysis. It is a taken-for-granted matter, referred to only occasionally and then only in passing.¹ A number of reviews of the mediation literature make no mention whatsoever of the mandate.² Peter Wallensteen and Isak Svensson, in their review, observe that the mandate is one of the key issues relating to mediation that has not been addressed in the literature.³

In the actual world of international peacemaking, the mandate is a vital component of mediated negotiations. As discussed in this article, it is treated with the utmost seriousness by the mandating organization and the mediator. It shapes the dynamics and results of mediation, and its acceptance, rejection, or contestation by the conflict parties has a crucial bearing on the success or failure of peacemaking endeavors. A mandate issued by a multilateral organization serves a number of functions: it confers legitimacy on the mediation, it endows the mediator with authority, status, and leverage, it provides the mediator with instructions, and it sets the parameters of the conflict resolution process and outcome. It consequently constrains the mediator and, to a varying extent, the conflict parties. It also performs a communicative function, sending messages to

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the parties and other relevant actors. The significance of the mandate is thrown into sharp relief when the mandate itself is the subject of dispute. We will see that such disputes can arise between the member states of the mediating body as well as between the mediating body and other multilateral organizations, the mediator, and one or more of the conflict parties.

This special edition of *African Security* focuses on the significance, role, and effects of the mediation mandate. Our overarching question is: How does the mandate matter? In this introductory article I address three subquestions: What are the different types of mediation mandate? What are the functions of these mandates? And what kinds of disputes are generated by the mandates? At this early stage of exploration, the emphasis is on identifying, mapping, and classifying the various dimensions and ramifications of the mandate.

The other articles in this edition are case studies that explore the mediation mandates issued by multilateral organizations in African conflicts: Peter Bartu on the United Nations (UN) mediation for Libya in 2011⁴; Kasaija Phillip Apuuli on the African Union (AU) mediation in the Libya conflict⁵; Antonia Witt on the Southern African Development Community (SADC) mediation for Madagascar from 2009–2013⁶; Jamie Pring on the question of inclusivity in the mediations for South Sudan (2013–2015) and Zimbabwe (2008–2009)⁷; Chris Saunders on the mediation for the independence of Namibia in the 1970s and 1980s⁸; Henning Melber on the UN intervention in the Republic of the Congo in 1960–1961⁹; and Michael Aeby on the SADC mediation for Zimbabwe (2007–2013).¹⁰

In the course of this article I identify and define different types of mediation mandates, distinguishing between constitutional, political, normative, donor, and party mandates. Notwithstanding these distinctions, I use the term “mandate” throughout in a manner consistent with its ordinary meanings as “an official order or commission to do something,” “a written authorization enabling someone to carry out transactions,” and “the authority to carry out a policy.”¹¹ International mediation is defined as “a process whereby a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements.”¹² In the context of armed conflict, mediation is a form of peacemaking, understood as action to bring hostile parties to agreement by peaceful means.¹³

The article is divided into four parts. The first is a conceptual overview, defining the different types of mediation mandate and linking the classification to the scholarly literature; the second discusses in more detail the relevance and features of each type of mandate, illustrated with examples of mediation in African conflicts; the third provides a deeper analysis of the political mandate; and the fourth categorizes and examines disputes relating to mandates.

The concept of the mediation mandate

To investigate the dimensions and effects of the mediation mandate, I distinguish between the following types of mandate:

- The *constitutional mandate*, enshrined in the charter or high-level policies of a multilateral organization, entails a general authorization for that organization to engage in mediation. For example, the protocol establishing the AU Peace and Security Council (PSC) provides a general mandate for the PSC to undertake mediation and other kinds of peacemaking.¹⁴
- The *political mandate* issued by a multilateral organization authorizes mediation in a particular conflict, provides instructions to the mediator, and sets the parameters of the peacemaking process and outcome. It is typically contained in one or more resolutions passed by the member state decision-making forum of that organization.
- Whereas the political mandate governs a particular case, the *normative mandate* comprises norms that regulate international or regional mediation in general. An example is the norm, espoused by both the UN and the AU, that mediation is a consensual form of peacemaking.¹⁵
- A *donors' mandate* exists where the donors who fund a mediation give instructions to the mediator or mediating body.
- The *parties' mandate* entails the conflict parties' acceptance of mediation and the mediator.

Scholars who refer to the mediation mandate usually mean the political mandate.¹⁶ Less commonly, they mean the constitutional mandate¹⁷ or the parties' mandate.¹⁸ For example, Jacob Bercovitch and Gerald Schneider focus on the parties' mandate in an empirical inquiry into which type of international mediator receives the most mandates from conflict parties.¹⁹ Wallensteen and Svensson discuss the political mandate in relation to the aims of mediation.²⁰ They suggest that the literature on mediation in armed conflicts assumes that the mediator's aim is always to reach a peace agreement. In reality, a mediator may simply seek to open a channel of communication with the parties. A more ambitious expectation may be not just to end the war but also to create more transparent political systems. In some situations there may be tension and a corresponding choice of mediation goals between the humanitarian imperative of stopping violence and the longer-term challenge of peacebuilding and sustained stability. Wallensteen and Svensson add that the mandate is also relevant to the question of institutional support and resources available to the mediation effort.²¹

Informed by practitioner experience, Chester Crocker and his colleagues stress the importance of developing and communicating the political mandate, without which “the mediator has no ground to stand on at home and can be blown off course or neutralized by the parties (or factions within the parties) and by domestic factions (perhaps in league with elements within the parties).”²² The mandate provides a “bedrock of institutional support,” contains the terms of reference that guide the purposes, scope, and methods of the mediation, confers authority on the mediator, and signals that he or she speaks for the organization, state, or group of states that issued the mandate. The mandate also “implicitly enables the mediator to draw upon the support as well as counsel of top political levels.”²³

Aside from the previously mentioned work, little if any scholarly attention has been paid to the mandate. The neglect is significant since the mandate is a key determinant of the trajectory and outcome of mediation. The political mandate issued by a multilateral organization specifies the mediator’s objectives, regulates his or her strategy, and influences whether or not the parties are receptive to mediation. It can contribute to success because it conveys the collective position and carries the weight of a forum of states. It can also inhibit effectiveness by tying the hands of the mediator, by making a party resistant to mediation, or by provoking disputes within and between multilateral organizations. A second consequence of the neglect of mandates, highlighted by Wallensteen and Svensson, is that inquiries into mediation success and failure might focus on outcomes that are not the same as those that the mediator was entrusted to attain.²⁴ A further consequence is that the literature largely ignores the relationship between the mediating body and the mediator, a principal-agent relationship governed by a mandate that simultaneously empowers and constrains the mediator.

Types of mandate

Constitutional mandate

In addition to authorizing a multilateral organization to engage in mediation, the constitutional mandate may specify the entity or official entrusted to undertake this activity. The protocol establishing the AU PSC thus confers responsibility for mediation on both the PSC and the chairperson of the AU Commission.²⁵ Among the African subregional organizations known as regional economic communities (RECs), only the Economic Community of West African States (ECOWAS) empowers the official who heads the organization’s secretariat to engage in mediation.²⁶ This explains why the president (previously executive secretary) of the ECOWAS Commission has been much more active in mediation than his counterparts in the other subregional bodies. The constitutional mandate may seem to be a relatively

banal issue, but it acquires political significance when, as discussed below, the UN, the AU, and an REC have overlapping jurisdictions for mediating in the same conflict.

Political mandate

The political mandate issued for a given conflict contains instructions to the mediator and sets the parameters of the process and outcome of peacemaking. In response to the 2009 coup in Madagascar, for example, the SADC Summit appointed former president Joaquim Chissano of Mozambique as the lead mediator, specified that the conflict resolution process should be conducted through an inclusive all-party political dialogue owned by the Malagasy people, and stipulated that the goal was the urgent restoration of constitutional rule through free and fair elections.²⁷ As a result of this formulation of the goal, the mediators concentrated on creating conditions conducive to free and fair elections rather than on addressing the political and structural problems that had led to the crisis.²⁸

In mid-2011 the Summit also demanded that Marc Ravalomanana, the ousted president who was in exile in South Africa, should be allowed to return unconditionally to Madagascar.²⁹ Over the next 18 months the coup regime's refusal to accede to this demand was the main impediment to ending the crisis.³⁰ Eventually the Summit backed down, conceding that Ravalomanana would not be able to return prior to the election. It modified the mandate so that neither Ravalomanana nor the head of the coup regime, Andre Rajoelina, could contest the presidential poll.³¹ The mediators managed to obtain the two leaders' consent to this arrangement, paving the way for elections in 2013.

As the Madagascar case shows, the political mandate can have a strong bearing on the tractability, duration, and outcome of a conflict. It can also determine which parties participate in the mediation and the extent to which the process is inclusive.³² For example, the SADC Summit's resolution initiating mediation for Zimbabwe in 2007 mandated the mediator, President Thabo Mbeki of South Africa, to "facilitate dialogue between the opposition and the government."³³ The process was hence confined to these actors, controversially excluding civil society.³⁴ By contrast, the Summit of the Inter-Governmental Authority on Development (IGAD) repeatedly stressed the need for civil society involvement in the mediation for South Sudan in 2013–2015 and went so far as to direct the IGAD mediators to organize "a series of public consultations with a wide range of South Sudanese actors."³⁵ The process was not free of controversy regarding civil society participation, but it was much more inclusive than the Zimbabwe mediation.³⁶

Where a multilateral organization has the requisite authority, it can issue a political mandate that is binding on the mediator, the conflict parties, and

other actors even if it is not itself the mediating body. Thus the UN Security Council resolutions on Namibian independence were binding on all states and on the mediators even though the mediating bodies were the Western Contact Group and the United States rather than the UN.³⁷ Similarly, resolutions of the AU PSC in respect of a particular conflict are formally binding on all member states.³⁸ By implication, they are also binding on the RECs and the mediators appointed by the RECs. It is therefore possible, and indeed quite common, for an African mediation to be subject to several political mandates issued by more than one organization. As I explain below, these mandates can be inconsistent with one another.

Normative mandate

The normative mandates in African mediations are based partly on global norms, such as respect for human rights and nonviolent resolution of conflict, that are shared by the UN, the AU, and the RECs. They also encompass regional norms, a prominent manifestation of which is the 2007 African Charter on Democracy, Elections and Governance. The Charter contains pre-prescripts for democratic transfer of power and for punitive action by the AU in response to unconstitutional changes of government. The AU PSC resolutions on particular conflicts often cite the Charter and emphasize one or more of its pre-prescripts. For example, after the 2015 coup in Burkina Faso, the PSC called for the perpetrators to be brought to justice “in accordance with the relevant provisions of the African Charter on Democracy, Elections and Governance.”³⁹

Besides distinguishing between global and regional norms, a distinction can be drawn between political norms that are not specific to mediation, such as those relating to democracy and human rights, and mediation-specific norms that are deemed essential to sound conflict resolution. The UN’s mediation norms are set out in the *United Nations Guidance for Effective Mediation*.⁴⁰ They include impartiality, consent, inclusivity, and ownership, meaning that the mediator must be impartial, the conflict parties must consent to mediation, the views and needs of the parties and other stakeholders must be fully included, and the mediation process and agreements must be owned by the parties and broader society and not imposed on them. The mediation norms of impartiality, consent, ownership, and inclusivity have been endorsed by the AU.⁴¹ They are not merely desiderata but are frequently included in political mandates. As noted, the mandate for the SADC mediation for Madagascar called for an inclusive political dialogue owned by the Malagasy people. Similarly, when the AU undertook mediation in Mauritania after the coup in 2008, the mandate directed the mediator to help the parties “reach a consensual and inclusive solution to the crisis.”⁴²

Donors' mandate

Many AU and REC mediations have been funded by donor governments, mainly from Western countries. This phenomenon has not been studied systematically, and it is therefore not clear to what extent, on what topics, and with what consequences donors issue instructions to the mediators or mediating bodies. The little that has been written on this subject highlights the donors' problematic role in pressing mediators to move with undue haste to produce a peace agreement.⁴³ In the AU mediation for Darfur in 2005–2006, the British government set unrealistic deadlines for concluding the process and threatened to withdraw its funding if these were not met.⁴⁴ The donors' deadline diplomacy compelled the mediators to concentrate on writing a draft agreement rather than on facilitating negotiations. This contributed to an absence of ownership by the parties and to the failure of the Darfur Peace Agreement. The donor deadlines initially amounted to an informal mandate and were later formalized in resolutions of the AU PSC and the UN Security Council.⁴⁵

Parties' mandate

It is not sufficient that mediators have a political mandate from the mediating body; they also need a mandate from the conflict parties. This follows from the mediation norm of consent, which is a definitional norm.⁴⁶ As the UN puts it, “mediation is a voluntary process that requires the consent of the conflict parties to be effective. Without consent it is unlikely that the parties will negotiate in good faith or be committed to the mediation process.”⁴⁷ The parties' mandate is fundamentally different from the other mandates discussed previously, which the mediator receives from the mediating body (and possibly from other external actors). By contrast, mediators must win and retain a mandate from the parties, which affords them some leverage over the mediators. This mandate may ebb and flow in the course of negotiations, it may be partial, tentative and incremental, and it may be granted by only some of the parties.⁴⁸ It may be expressed in writing, but more usually it is evident in the conduct of the parties.

The early phase of the mediation to end the Burundi civil war illustrates both the need to secure a mandate from the parties and the precariousness of that mandate.⁴⁹ In 1996 Salim Salim, the secretary-general of the Organization of African Unity, asked former president Julius Nyerere of Tanzania to take on the job of mediator. Nyerere was willing to do so provided that the Burundi politicians were ready for mediation and accepted him as the mediator. To this end, he paid several discreet visits to Burundi to meet with leaders of political parties, the military, and civil society. He received sufficient support to start the mediated talks in Arusha. Shortly

thereafter a coup took place in Burundi, and the regional heads of state, with Nyerere's support, imposed a trade embargo on the country. This caused the government led by Pierre Buyoya to boycott the Arusha process. Over the next two years Nyerere's mediation stalled as Buyoya pursued negotiations with opposition groups under the auspices of different mediators.

The parties' mandate can be subdivided into several components: consent to participate in mediated negotiations, acceptance of the mediating body, acceptance of the mediator, consent to the agenda for negotiations, and acceptance of agreements. These components are severable: a party might reject mediation emphatically and irrevocably, as the rebels did in the Libya crisis in 2011;⁵⁰ or they might reject the mediating body, as when the Malagasy coup regime held SADC at bay in 2010 on the grounds that it was biased against them;⁵¹ or they may be willing to participate in mediation but call for the mediator to be replaced, as Buyoya did in the Burundi case and the Movement for Democratic Change did in the SADC mediation for Zimbabwe.⁵² A party might reject mediation for various reasons, one of which is the stand taken by the mediating body. As we will see later, the political mandate can impede the mediator's efforts to secure a mandate from the parties.

The cases covered in this special edition of *African Security* show that a mediator's failure to obtain a strong mandate from the parties can have a host of negative consequences: the mediator's authority and credibility are weakened; the mediator can become the subject of controversy, dissipating the focus on the conflict between the warring parties; domestic and international stakeholders can lose confidence in the mediation; other peacemaking organizations might take advantage of this and mount a rival peacemaking initiative; and the mediation might fail to get off the ground, grind to a halt, or stutter along in fits and starts.

Functions of the political mandate

While all the mandate types are consequential, the political mandate issued by a multilateral organization is especially influential and interesting because of its diverse functions. It projects the consensual position of the organization's member states, confers authority and legitimacy on the mediation, appoints the mediator as an agent of the organization, provides instructions to the mediator, sets the parameters of the conflict resolution process and outcome, and sends political messages to the parties and other actors. Strictly speaking, these are *intended* functions, and the extent of their realization may differ from case to case. The functions are categorized in this section in relation to the mediating body, the mediator, the conflict parties, and states and multilateral organizations.

Functions in relation to the mediating body

When a multilateral organization formulates a political mandate to mediate in a particular conflict, it must forge a consensus among member states on the goals and features of that mediation. If consensus cannot be reached, the organization might either adopt a weak or ambiguous mandate or refrain from mediating. If consensus is reached, the mandate conveys a unified position and imbues the mediation with the weight, balance, and legitimacy of a multilateral organization. Such mediations are ostensibly less self-serving and partisan and therefore stronger politically than if the mediating body is a single state.

Where a mediation is undertaken by states, its legitimacy can be enhanced by a UN Security Council mandate. In the Namibia case, for example, the first phase of the mediation to achieve independence was conducted in the late 1970s by a self-appointed group of Western countries that facilitated indirect talks between the South African government, then occupying Namibia, and the liberation movement SWAPO (the South West Africa People's Organization). When sufficient consensus among the parties had been brokered, the Western Contact Group tabled the transition plan at the Security Council. The Council ratified it through Resolution 435 of 1978, which became the mandate for subsequent mediation efforts by the United States. The Council's backing was necessary because the UN was expected to oversee the transition. In addition, given the extent of Cold War polarization and the African bloc's strong interest in Namibian independence, a Western plan was not sufficiently legitimate and needed the endorsement of the Security Council.⁵³

Functions in relation to the mediator

The political mandate that appoints a mediator confers on that person the status of a high-level representative of the mediating organization and authorizes the mobilization of financial, administrative, and human resources to support him or her. We have seen that another key function of the political mandate is to provide the mediator with a set of instructions and parameters regarding objectives, strategy, process, and norms. The instructions can be relatively broad and general, such as to "facilitate dialogue between the opposition and the government [in Zimbabwe]."⁵⁴ They can also be narrow and specific. For example, after the warring parties in South Sudan signed a cessation of hostilities agreement, the IGAD Summit directed the mediators to establish an initial monitoring and verification mechanism within 48 hours and to hold consultations with IGAD member states and partners to ensure and articulate a common approach to the next phase of the process.⁵⁵

The parameters of the solution to the conflict may be determined in the first instance by the mandating organization's definition of the conflict. For example, the UN General Assembly defined the Namibian conflict as one of illegal occupation by South Africa following the termination of South Africa's League of Nations mandate to govern the territory; the solution then lay inescapably in South Africa's withdrawal and Namibia's independence.⁵⁶ In the case of Madagascar, the AU and SADC defined the 2009 crisis as an unconstitutional seizure of power. This triggered the normative mandate of the African Charter, which precludes the perpetrators of unconstitutional action from holding any position of responsibility in the political institutions of their state.⁵⁷ A stipulation of this kind makes it difficult, if not impossible, for a mediator to promote power-sharing arrangements in the interests of stability.

Although the mandate constrains the mediator, it also has the positive effect of giving him or her some leverage over the parties, which is most needed when they are intransigent. There is clearly a big difference between defying an individual mediator and defying a multilateral organization that has the capacity to apply coercive measures. This accounts for a striking trend in the cases covered in this edition of *African Security*, in which mediators frequently requested a multilateral organization to affirm, clarify, reinforce, or extend the mandate through further resolutions. We have seen that mediators did this in the Namibia and Burundi conflicts. Similarly, Chissano submitted his mediation roadmap for Madagascar to the SADC Summit for ratification.⁵⁸ President Jacob Zuma of South Africa, who replaced Mbeki as the SADC mediator for Zimbabwe, ensured that his recommendations to the parties were endorsed in Summit resolutions, thus becoming part of the mandate and gaining traction.⁵⁹

Functions in relation to the conflict parties

In relation to the conflict parties, the political mandate has communicative and peremptory functions. A number of general messages are evident in the mandates covered in this edition: the mediating body is concerned about the country and the conflict, it intends to intervene in order to help resolve the conflict through mediation, and it expects the parties to heed its directions, cooperate with its mediator, exercise restraint, and avoid violence and abuse of human rights. The tone tends to be mixed, simultaneously concerned, supportive, stern, and cautionary. The more specific messages and tone depend on the mediating body's analysis of the situation and its objectives.

By way of illustration, the SADC Summit's resolutions on Madagascar encouraged "the Malagasy parties to fully cooperate with the SADC coordinated political dialogue aimed at restoring the constitutional order, peace and stability in Madagascar."⁶⁰ The resolutions also urged "all stakeholders to

commit themselves to peaceful negotiated settlement through dialogue and desist from any violent solutions and inflammatory statements which may jeopardize and undermine current efforts in bringing constitutional normalcy.”⁶¹ The more specific messages included the Summit’s demand that the coup regime allow the ousted president to return unconditionally to Madagascar.⁶² In the Zimbabwe mediation, as noted, Zuma got the SADC Summit to ratify his recommendations to the parties, effectively turning the recommendations into instructions from the Southern African heads of states.

Functions in relation to states and multilateral organizations

The political mandate’s communicative function is directed not only at the conflict parties but also at relevant states and multilateral organizations. Mandates issued by the UN, the AU, and the RECs typically have several explicit or implicit messages in this regard: the mediating body asserts its leadership of the peacemaking process and calls on other organizations to respect this; it requests states and organizations to comply with its decisions, such as the imposition of sanctions; and it expects other external actors to avoid exacerbating the conflict, such as by arming the conflict parties.

For example, the SADC communiqué announcing the appointment of Chissano as the mediator for Madagascar had two overt messages for other multilateral organizations: Chissano would “lead and coordinate the all-party dialogue in Madagascar” and SADC would work closely and coordinate with the AU, the UN, and other external stakeholders.⁶³ The first message, asserting subsidiarity, was considered necessary because SADC had been slow to appoint a senior mediator and at that stage the AU was leading the mediation. The second message was meant to soften the impact of the first message and reduce the friction caused by Chissano taking over the lead of the mediation.

Disputes over mandates

The political mandate never goes unnoticed by the mediating body, other relevant international organizations, the mediator, and the conflict parties. It attracts heightened attention when it generates disputes. From a scholarly perspective, the disputes amplify and shed light on the significance of mandates. The following discussion considers mandate disputes between multilateral organizations, between member states, between the mediating body and the mediator, between the political mandate and the parties’ mandate, and between the various norms covered in normative mandates.

Disputes between multilateral organizations

A big challenge arising from the constitutional mandates of the UN, the AU, and the RECs is that they create overlapping geographical jurisdictions of responsibility for mediation and adopt incompatible positions on which of these organizations should be the lead mediator in a given conflict. Both the UN and the AU assert the principle of primacy and at the same time uphold the conflicting principle of subsidiarity.⁶⁴ In the case of the UN, Article 24(1) of the Charter confers on the UN Security Council the primary responsibility for the maintenance of international peace and security, whereas Chapter VIII promotes subsidiarity by expecting states to make every effort to settle local disputes through regional arrangements before referring them to the Council. The AU's high level documents are replete with inconsistencies: they affirm the UN Security Council's primary responsibility for international peace and security⁶⁵; proclaim that the AU has the primary responsibility for promoting peace, security, and stability in Africa⁶⁶; and support subsidiarity between the AU and the RECs.⁶⁷ The RECs, for their part, naturally favor subsidiarity.

In light of the above, the UN, the AU, and the RECs all have a basis for claiming the leadership of peacemaking in a given conflict on the continent. In practice, mediation is usually led by an REC, but on occasion there has been severe interorganizational tension. The high profile cases include Zimbabwe (2008), Madagascar (2009), Côte d'Ivoire (2011), Darfur (2011), Libya (2011), Guinea-Bissau (2012), Mali (2012), the Central African Republic (2013 and 2015), and Burkina Faso (2015).⁶⁸ The Burkina Faso crisis exemplifies the incompatibility between the principles of primacy and subsidiarity. In 2015 the presidential guard mounted a coup against the transitional regime that had been installed after a coup the previous year. The AU PSC demanded that those responsible for the unconstitutional action and related killings and kidnappings be held accountable before the relevant national and international jurisdictions.⁶⁹ The PSC also asserted its primacy in addressing the crisis, reminding member states that they were obliged to abide by its decisions.⁷⁰ Nevertheless, President Macky Sall of Senegal, who headed the ECOWAS mediation, drew up an agreement that included an amnesty for the perpetrators on the grounds that this was vital for stability.⁷¹ The ECOWAS Summit endorsed Sall's position and claimed precedence over the AU on the basis of subsidiarity.⁷²

Whereas the overlapping constitutional mandates for mediation are a systemic cause of the interorganizational disputes over peacemaking on the continent, the proximate causes are usually divergent views on the core mandate issues of objectives, strategy, and norms.⁷³ The Côte d'Ivoire crisis of 2011 provides a comprehensive illustration of this. In late 2010 the Ivorian president, Laurent Gbagbo, was defeated by Alassane Ouattara in presidential

elections. The victory was confirmed by the electoral commission, the UN, the AU, and ECOWAS. When Gbagbo refused to step down, ECOWAS threatened to use force to remove him.⁷⁴ The AU did not support military intervention and pursued mediation instead. Its political mandate recognized Ouattara as the president-elect and aimed to find a solution based on negotiations with the conflict parties.⁷⁵ The first AU mediator was Mbeki, who infuriated ECOWAS by recommending a power-sharing arrangement.⁷⁶ Thereafter an AU mediation panel comprising five heads of states proposed the formation of a government of national unity that excluded Gbagbo.⁷⁷ The UN and ECOWAS, on the other hand, were opposed to a power-sharing deal since it would compromise democracy.⁷⁸ As fighting intensified throughout the country the UN Security Council, encouraged by ECOWAS, mandated the UN peacekeeping mission in Côte d'Ivoire to “use all necessary means” to protect civilians.⁷⁹ With military support from the UN and France, Ouattara defeated Gbagbo.⁸⁰ The UN and ECOWAS mandates favoring the use of force and a principled stand on democracy thus trumped the AU mandate for mediation and a compromise solution.

Disputes between member states

The importance of the political mandate's functions of projecting member state consensus and thereby conferring legitimacy on a mediation is starkly evident when these functions cannot be fulfilled adequately because member states are not united. Our cases indicate three possible consequences of a lack of unity and consensus. The first is that the effectiveness of the mediation is impaired. In the Libyan crisis, for example, the AU was split on whether Muammar Gaddafi could participate in mediated negotiations or should be pressured into stepping down immediately, as the rebels demanded. This split heightened the rebels' lack of confidence in the mediation⁸¹ and “enabled P3 diplomats to ignore the AU.”⁸² In the IGAD mediation for South Sudan, member states were even more divided, with some of them playing roles that made them parties to the conflict; this greatly compromised the cohesion, credibility, and viability of the mediation.⁸³

The second possible consequence of a lack of consensus among member states is that the mandate may be vague or ambiguous, giving rise to disputes over its interpretation and hampering implementation, as happened with the UN operation in the Congo in 1960–1961.⁸⁴ The third possible consequence, illustrated by the impasse in the UN Security Council over the Zimbabwe crisis, is that the lack of consensus precludes mediation. In 2008 Western countries in the Council were unhappy that the SADC mediation led by Mbeki was biased in favor of the ruling party. They tabled a draft resolution demanding that the Zimbabwean government accept the good offices of the UN secretary-general and the AU as

well as SADC.⁸⁵ The draft resolution was opposed by South Africa and vetoed by Russia and China, with the result that the UN did not play a mediating role in that conflict.

Disputes between mediating body and mediator

International mediators are not simply passive facilitators of dialogue and negotiations between the conflict parties. They propose solutions and try to persuade the parties to accept them. The solutions, which invariably require the parties to shift their respective positions, may also deviate from positions articulated in the political mandate. Lakhdar Brahimi and Salman Ahmed warn that in these circumstances, UN mediators dare not neglect their relationship with the mediating body that appointed them.

Naturally, the key members of the international community will not back the mediator if they perceive (s)he is indifferent to, or working against, their legitimate concerns and interests. Security Council members need to be constantly consulted and assured that the courses of action the mediator proposes are faithful to the mandate they have authorized (and carefully calibrated to reconcile points of disagreement among them).⁸⁶

The mediating body might ignore the mediator's transgressions of the mandate, but there are many instances where it has reacted firmly. The reactions include the radical step of replacing the mediator. The AU did this when its mediator in the 2008 coup in Mauritania, Muammar Gaddafi, publicly opposed the AU's imposition of sanctions and dismissed the AU's call for the reinstatement of the deposed president.⁸⁷ The AU promptly replaced Gaddafi with President Abdoulaye Wade of Senegal. In the SADC mediation for Madagascar, the Summit came to feel that Chissano had strayed too far from the mandate and it shifted the leadership of the mediation to the Organ Troika.⁸⁸ A less drastic option is for the mediating body to appoint additional mediators. ECOWAS reacted in this fashion when its mediator in the Mali coup of 2012, President Blaise Compaoré of Burkina Faso, made too many concessions to the junta.⁸⁹ These concessions, which included consenting to an amnesty for the coup perpetrators, undermined the tough stand taken in the political mandate. The ECOWAS Summit then appointed President Goodluck Jonathan of Nigeria to accompany Compaoré. In both the Mali and Madagascar cases the mediating bodies revoked some of the concessions their mediators had made to the coup regimes.⁹⁰

Tension between political mandate and parties' mandate

Where the political mandate condemns a conflict party or its leader, and even more so where the mediating body resorts to punitive action, the mediator is likely to struggle to obtain a mandate from the targeted party. Paradoxically, a tough and principled democratic stand by the mediating body might make the process of conflict resolution more difficult and protracted. For example, in response to the Libyan government's brutal crackdown on protests in 2011, the UN Security Council referred the situation to the International Criminal Court (ICC), imposed an arms embargo, and applied smart sanctions against Gaddafi and members of his cabinet and family.⁹¹ The ICC referral, in particular, hindered the UN mediator's job because it raised the possibility that Gaddafi might be arrested after a negotiated settlement was reached.⁹² Similarly, SADC's uncompromising posture on Madagascar in the immediate aftermath of the coup militated against progress in the subsequent mediation. The Summit suspended Madagascar, demanded that Rajoelina relinquish power, and warned that force might be used to dislodge the coup regime. Consequently, the regime viewed Chissano as an enforcer rather than a mediator and argued that SADC was not the right entity to lead the mediation.⁹³ Unsurprisingly, Chissano struggled to win the trust and cooperation of the regime and the confidence of the public.

Tension between political norms and mediation norms

Earlier in this article I drew a distinction between political norms and mediation-specific norms that are embraced in mandates. The former typically promote democratic precepts, some of which are global and others regional. The mediation norms, as noted, include mediator impartiality, multi-stakeholder inclusivity, national ownership, and the parties' consent to mediation and the resultant agreements. These mediation norms are sometimes in conflict with the political norms.

A prominent manifestation of this tension concerns the inclusion of amnesty provisions in peace agreements. The UN norm is that amnesty cannot be granted for genocide, war crimes, crimes against humanity, or gross violations of human rights.⁹⁴ At the regional level, the African Charter rejects impunity and asserts that the "State Parties shall bring to justice the perpetrators of unconstitutional changes of government."⁹⁵ These political norms are in conflict with the mediation norms of consent, inclusivity, and ownership, which are antithetical to exclusionary politics and external injunctions. Moreover, mediators may be inclined to support amnesty in order to obtain the cooperation of leaders who are at risk of prosecution. The clash of norms can generate friction between mediators and mediating

bodies: as noted, the mediator's consent to amnesty was opposed by the AU in the case of Burkina Faso and by ECOWAS in the case of Mali.

Aside from the issue of amnesty, the mediation norms of consent, impartiality, inclusivity, and ownership are incompatible with the African Charter norms that, in a preemptory and coercive fashion, specify the required outcome and seek to exclude the perpetrators of unconstitutional action from the postconflict dispensation. There is a vast difference between insisting on a predetermined outcome and forging a consensual one through mediated negotiations, between isolating the perpetrators of unconstitutional action and forging an inclusive agreement, between taking a principled political stand and encouraging mutual compromise, between enforcing a solution and facilitating one, and between an impartial third-party intervention and condemning and punishing the offenders.

Conclusion

Mediation mandates matter in a number of ways, and the political mandate issued by a multilateral organization is especially influential. The political mandate contains objectives, strategies, and norms that serve as high-level instructions to the mediator and, more broadly, as parameters for the process and outcome of peacemaking. It can shape, for example, the extent to which the process is inclusive and the extent to which the outcome conforms to democratic norms. It can contribute to the success of a mediation by representing the consensual view of member states, imbuing the mediation with political weight and legitimacy, giving the mediator authority and leverage and triggering the mobilization of resources to support the mediation. On the negative side, the mandate can impair the effectiveness of mediation by constraining the mediator and by generating tension between the mediating body and other multilateral organizations, the mediator, and the conflict parties.

The fact that the political mandate is important does not mean that all its elements will be implemented faithfully, that it will be respected by all the relevant actors or that its effects will be the same in all cases. Yet there is no doubt that a mandate issued by a multilateral organization is taken seriously by the mediator, officials, and member states of that organization as well as by other multilateral organizations and the conflict parties.

It follows that research on mediation should pay more attention to the mandate. Inquiries into mediation objectives, strategy, and outcomes may be incomplete if they ignore the content and influence of the mandate. Future research on mandates could compare African with non-African multilateral mandates, which might differ in terms of their normative character in particular. It could compare mandates issued by multilateral organizations with the mandates that apply to mediation undertaken by states and

nongovernmental organizations. It could also investigate the pros and cons of including threats and coercive measures in mandates, the respective merits of broad and flexible mandates versus narrow and specific ones, and the way that political mandates evolve in response to the changing dynamics of a conflict. This research would benefit considerably from interviews with international mediators, who could identify the facets and effects of mandates that are not evident from studying other sources.

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Working Paper

Are Mediators Norm Entrepreneurs?

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Jamie Pring

3 / 2017

Are Mediators Norm Entrepreneurs? Exploring the Role of Mediators in Norm Diffusion

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AU	African Union
ECOWAS	Economic Community of West African States
EU	European Union
ICC	International Criminal Court
IGAD	Intergovernmental Authority on Development
NGO	Non-Governmental organization
OSCE	Organization for Security and Co-operation in Europe
SADC	Southern African Development Community
SPLM-IO	Sudan People's Liberation Movement-In Opposition
UN	United Nations

Mediators are expected to include or uphold a growing number of norms in their interventions. For instance, inclusivity, gender equality, transitional justice, democracy promotion and the implementing instruments that accompany them are increasingly incorporated into the strategies of international and regional organizations, states and non-state actors that mandate mediation missions in conflicts around the world. This working paper takes one step back and asks whether mediators actually can, or have the agency to, promote these norms. It presents the analytical framework of a three-year multi-case research project on the role of mediators in norm diffusion. It examines what norms form part of the framework for mediation processes, if mediators promote these norms and how and what norms are internalized in the peace process. Through process-tracing, the research project will apply this analytical framework to mediation processes in Syria, South Sudan and Myanmar.

1 Introduction

The role of norms in international peace mediation has become more prominent in recent years. Mediation can be defined as “a process of conflict management, related to but distinct from the parties’ own negotiations, where those in conflict seek the assistance of, or accept an offer of help from, an outsider [...] to change their perceptions or behavior, and to do so without resorting to physical force or invoking the authority of law” (Bercovitch 2009, 244). Mediators are third party actors who assist two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements (United Nations 2012).

As mediation lies at the core of a wider peacebuilding process, an increasing number of actors in the peacebuilding field view mediation processes as an opportune time to promote international norms, such as inclusivity, gender equality, transitional justice and democracy. The UN Guidance for Effective Mediation (United Nations 2012) defines certain principles as essential for more effective mediation, thereby confirming the growing imperative of normative frameworks in mediation. Consequently, mediators are often not only expected to facilitate processes aimed at ending hostilities between warring parties, but are asked to integrate a specific set of norms held by their mandate-givers into their mediation strategies.

This development begets two main questions. The first is whether mediators should promote these norms. Guidance documents published by international organizations and state governments mandating mediation processes have often implicitly assumed an affirmative answer to this question. In contrast, many mediators themselves forward the view that their normative role should be limited as mediation is a voluntary process dependent on the consent of the conflict parties who ultimately determine the content of the peace agreement (Hellmüller, Palmiano Federer, and Zeller 2015). This reasoning, in turn, draws attention to the second, more fundamental issue: whether mediators can, or have the agency to, promote norms in the mediation process.

This working paper addresses this second question inquiring into a mediator’s normative agency. It presents the analytical framework of a three-year multi-case research project on the role of mediators in norm diffusion. It is structured into three parts. The first part provides an overview of the project’s contribution to the current literature. The second part outlines the analytical framework specifying the theories used as well as the main research questions addressed. The third part presents the operationalization of the main research questions. The working paper then concludes on the relevance of the project for both research and practice.

2 Literature Review

The research project requires exploration into several bodies of literature. The first is norm diffusion scholarship in international relations (e.g. Wendt 1992, Katzenstein 1996, Finnemore and Sikkink 1998, Price 1998, Checkel 1999, Tannenwald 1999). The second is scholarship on the actors, processes and content of mediation processes (e.g. Mandell and Tomlin 1991, Kleiboer 1996, Zartman 2001, Bercovitch 2006, Lanz 2011, Nathan 2013). The third is political philosophy and ethics (e.g. Kratchowil 1989; Franck 1990; Rawls 1993).

2.1 Contribution to the Norms Literature

Norms are a widely researched phenomenon in international relations theory. Katzenstein (1996, 5) defines norms as “collective expectations about proper behavior for a given identity”. In that sense, “rather than representing ‘average’ behavior in a statistical sense, they are regularities commonly believed to oblige general conformity” by the members of a given social system (Raymond 1997, 218). In terms of their effects, norms may regulate (defining what actors can or cannot do), constitute (defining new actors, behaviors and interests) or prescribe human behavior (recommending what actions can or cannot be taken in certain situations) (Katzenstein 1996, Finnemore and Sikkink 1998, Ruggie 1998).

Since the late 1980s, scholarship on norms has taken a constructivist turn (Wendt 1992, Adler 1997, Checkel 1998, Guzzini 2000, Björkdahl 2002, Bluman-Schroeder 2004, Krampf 2013, Bettiza and Dionigi 2014). Being an alternative to rationalist approaches to studying international relations, it emphasizes that the environment through which actors take action is social as well as material; that these material structures are given meaning through collective ideas; and that these collective understandings become social facts by human agreement (Adler 1997, Checkel 1998, 325).

The scholarly interest in how norms spread triggered the development of models of norm diffusion processes in international relations including persuasion (Finnemore and Sikkink 1998), socialization (Katzenstein 1996), translation (Bettiza and Dionigi 2014), framing (Payne 2001) and localization (Acharya 2004). Several authors used these models to examine the diffusion of norms, such as anti-slavery movements (Ray 1989), decolonization (Nadelmann 1990, Strang 1991), anti-apartheid (Klotz 1995), humanitarian work (Finnemore 1996), the ban on anti-personnel mines (Price 1998), nuclear weapons (Schelling 1994, Tannenwald 1999), labor standards (Payne 2001), European regionalism (Krampf 2013) and religious norms (Bettiza and Dionigi 2014).

By focusing on mediators’ normative agency, the research project addresses two main biases in the existing literature on norm diffusion. Firstly, the norms literature initially focused on norms that diffused and overlooked those that did not (Checkel 1999, 86). Only more recently, scholars started to look into instances of non-diffusion (Acharya 2012),¹ norm rejection (Hirata 2004) and norm contestation (Contessi 2010). The research project adds to

¹ Legro (1997, 34) was an early exception.

this literature by analyzing mediators' normative agency in choosing which norms to promote or not to promote from the normative framework they act in and in shaping the norms as they are diffused.

Second, for a long time, the norms literature focused on structures rather than agents (Checkel 1998, 1999). Despite the fact that constructivism is based on the assumption of the mutual constitution of agents and structures, most analyses used "a largely structure-centered ontology, where structures (typically norms) provide agents [...] with new understandings of their interests" (Checkel 1999, 85). Thereby, the agency of actors remained largely unaccounted for because constructivism overemphasized "the role of social structures and norms at the expense of the agents who help create and change them in the first place" (Checkel 1998, 325, 1999, 86). Since the 2010s, calls for a more agent-focused analysis have gained momentum. Sikkink (2011, 3), for instance, attempts to draw more "theoretical and empirical attention to the agency side of the [agent-structure] debate" through her focus on 'agentic constructivism'. Agentic constructivism focuses on the role of human agency in norm emergence and diffusion. Despite such attempts, however, constructivism continues to be associated with its more structural proponents (Sikkink 2011). The research project contributes to the move from a structure-centered to an agent-centered approach by focusing on mediators' normative agency through an analysis of how mediators influence structures through norm diffusion.

2.2 Contribution to the Mediation Literature

International peacebuilding has been characterized by attempts to diffuse liberal norms (Richmond 2009, Newman, Paris, and Richmond 2009, Paris 2010). The liberal peace paradigm holds that "certain kinds of (liberally constituted) societies will tend to be more peaceful [...] than illiberal states" (Newman, Paris, and Richmond 2009, 11). Different activities related to peacebuilding ranging from brokering a ceasefire between warring parties to dealing with past atrocities and human rights abuses are increasingly underpinned by "the promotion of democracy, market-based economic reforms and a range of other institutions associated with 'modern' states as a driving force for building 'peace'" (Newman, Paris, and Richmond 2009, 3). These activities are designed to broker a 'just and sustainable peace', well beyond the cessation of hostilities in a given conflict context, and thus involve the spread of liberal norms through the set-up of the basic pillars of a liberal democracy.

This liberal agenda of international peacebuilding is mirrored in the mediation field. This is illustrated by the fact that international actors, such as the UN, often already call for elections even before a mediation process starts.² Moreover, almost every internationally sponsored ceasefire or peace agreement contains provisions on elections and democratic governance (Daley 2006, 303). Since mediation sets the stage for longer term peacebuilding processes and the future disposition of a country, mediation guidelines and handbooks assume that mediators are strategically well-positioned to contri-

² For instance, in the case of the Democratic Republic of Congo, UN Security Council resolution 1234 adopted in April 1999 stressed the importance of "holding on an early date of democratic, free and fair elections". This was three months before the signing of a ceasefire agreement by the parties in Lusaka. Similarly, in the case of Syria, UN Security Council resolution 2254 adopted in December 2015 stressed the UN's support for elections within 18 months. This was before the intra-Syrian talks started in Geneva on 29 January 2016.

bute to the diffusion of norms. Therefore, they are increasingly faced with normative demands reflecting the liberal norms of their mandate-givers and the wider peacebuilding environment.

These developments with regard to the role of mediators in norm diffusion have mostly been treated prescriptively and in policy papers, rather than in scholarly contributions.³ This is due to the fact that the mediation literature largely focuses on factors leading to a successful outcome of a peace process, examining either context or process factors. The former encompass aspects such as the nature of the conflict, the parties and their relationship, the mediator and the international context (Kleiboer 1996, 361). Studies on the ripeness of a conflict are an example of such context factors that mostly describe the "parameters within which mediators must act" (Mandell and Tomlin 1991, 43–44, Zartman 2001, Greig 2001). Process factors, in turn, analyze the mediators' activities and the "effects of various strategies and tactics that may be employed by mediators in efforts to manage conflict" (Mandell and Tomlin 1991, 44). What is missing is a discussion about the ideational factors that influence the behavior of mediators and how mediators influence the normative aspects of peace processes. The research project addresses this gap.

2.3 Nexus between Legitimacy, Norm Diffusion and Mediation

As mediators typically do not wield coercive power on the conflict parties, the concept of legitimacy is important in understanding their normative agency. In this sense, legitimacy is a form of non-coercive power⁴ that pulls actors to comply with norms. Recognizing the manifold contested meanings surrounding the concept, one way this research project understands legitimate power is "the normative dimension of power relations, and the ideas and practices that give those in power their moral authority" (Beetham 2013, x). In other words, power is legitimate if those pulled to comply by it acknowledge or believe it to be rightful. The 'rightfulness' underpinning these claims to exert power are often moral and universalistic in nature: any rational person in any context or society would endorse and accept them based on common human reason.⁵

Investigating the legitimacy of mediators is central to the discussion of their normative agency because it comprises the moral aspects of the power relationships between a mediator and conflict parties. In other words, the legitimacy of a mediator forms the basis of their agency to promote norms to the parties and to have the parties comply or internalize the norms they are promoting. Discussions on the moral and ethical basis of power and norm diffusion can be located within a wealth of scholarship on ideas, norms and power (Beetham 2013, Franck 1990, Kratchowil 1989, Price 1998, Price and Reus-Smit 1998, Rawls 1993, Tannenwald 1999, Vukovic 2015). However, these scholarly discussions are not robustly applied to mediation. A noteworthy exception is Vukovic's (2015) notion of legitimate power of the mediator as an

³ Some exceptions include Raymond and Kegley (1985), Mandell and Tomlin (1991), Bluman-Schroeder (2004).

⁴ The concept of legitimacy is complex and multi-dimensional, despite its ubiquity as one of the most common terms of everyday political discourse. There are entire strands of political philosophy and social sciences dedicated to understanding the relationship between power, normativity and morality. Therefore, this research project uses David Beetham's (2013) 'update' of Max Weber's notion of legitimacy as a point of departure.

⁵ This is a central yet contested claim in many strands of political philosophy. For one such take on legitimacy in relation to justice and reason, see Rawls (1993).

3

Conceptualization of the Research

institutionalized version of soft power. In his view, legitimate power in the form of soft power derives from a set of social norms such as position, reciprocity, equity and responsibility. These elements lend to the consent or acceptance of mediation by the conflict parties (Vukovic 2015, 427). This research project further contributes to linking the literature on norm diffusion and legitimacy to mediation. It attempts to understand what comprises a mediator's legitimacy in the eyes of the conflict parties and how this perceived legitimacy may contribute to their ability to promote certain norms to the conflict parties.

3.1 Analytical Framework

One of the most prominent models to study norm diffusion is the 'life cycle model' developed by Finnemore and Sikkink (1998). They introduced the model to analyze how justice and human rights norms develop and get incorporated in international institutions. Within this model, they define norm entrepreneurs as actors who "attempt to convince a critical mass of [actors] to embrace new norms" (Finnemore and Sikkink 1998, 895). They describe the "purposive efforts of individuals and groups to change social understandings" (Finnemore and Sikkink 2001, 400). Such norm entrepreneurs work through different techniques, such as the "strategic use of information, symbolic politics, leverage politics and accountability politics, issue framing, and shaming" in order to diffuse norms (Finnemore and Sikkink 2001, 400).

The life cycle model distinguishes three phases of norm diffusion: emergence, cascade and internalization. In the norm emergence phase, norm entrepreneurs communicate their issue to reach and persuade a broader audience. In the norm cascade phase, other actors adopt the norm through imitation. Lastly, in the norm internalization phase, norms assume a 'taken for granted' quality. In defining the actors in these phases, Finnemore and Sikkink (1998) distinguish between 'norm-makers' (mostly transnational networks and non-governmental organizations (NGOs) often supported by intergovernmental organizations) and 'norm-takers' (states). The 'life cycle' model thus provides the general framework within which norm diffusion takes place. At the same time, Finnemore and Sikkink (1998) encourage further research to examine the processes in each stage of the model as well as to account for the dynamics that allow them to progress from one phase of the model to another.

Applied to mediation, the model needs three adaptations. First, in Finnemore and Sikkink's model, transnational networks and NGOs (sometimes supported by intergovernmental organizations) are mostly seen as norm-makers and states are seen as norm-takers. In a mediation process, the distribution of the roles of norm-makers and norm-takers between mandate-givers, mediators and conflict parties is fluid. Mediators can be mandated by states, international or regional intergovernmental organizations or NGOs. They can be norm-makers in the sense of them being norm entrepreneurs. The norm-takers are then the conflict parties who start to imitate the behavior and internalize certain norms. However, mediators can also be norm-takers since they are working within the normative framework of their mandate-givers and they also have to take the conflict parties' norms into consideration when designing the process and proposing arrangements amenable for the conflict parties.

This is linked to the second adaptation. While in Finnemore and Sikkink's model, the norm-makers mostly act on their own behalf, mediators have mandate-givers who set the normative framework for instance in institutional policies. This distinction is important in order to differentiate between the norms stemming from the institutional normative framework in which mediators act and norms from the normative socialization of mediators themselves. More-

over, it indicates the norms that might have emerged in international peace-building and mediation generally, but are not diffused by mediators and hence do not cascade to be internalized by conflict parties. This gives important insights into norm non-diffusion as stated above.

Thirdly, the phases of norm emergence, cascade and internalization happen in different social systems at the same time. This is linked to the third adaption of the life cycle model. Norms can emerge, cascade and be internalized within mandate-givers, mediators as well as conflict parties. While acknowledging this, the project focuses on those norms that are diffused by mediators to the conflict parties, but takes into account that the mandate-givers' and the parties' normative frameworks obviously influence the types of norms that mediators diffuse.

3.2 Research Questions

The overall research question of the three-year research project is to what extent mediators are norm entrepreneurs. To answer it, our research addresses three sub-questions of 1) what norms form part of the normative framework for mediation processes; 2) whether mediators promote norms and how; and 3) which norms have been internalized through mediation processes.

What Norms Form Part of the Normative Framework for Mediation Processes?

This first sub-question relates to the normative frameworks that delineate the parameters for a mediator's behavior in a given mediation process. It assesses which normative parameters mediators are expected to adhere to when designing their overall strategy and interacting with the conflict parties.

The legal basis for mediation is enshrined in the UN Charter, Chapter VI, Article 33. This article calls on parties to any dispute to seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means if the continuance of a dispute may threaten international peace and security. In addition to the UN Charter, mediators mandated by a state or an intergovernmental organization are bound by specific framework documents, such as national constitutions or constitutive acts of regional organizations. They are also bound by other legal obligations that include "global and regional conventions, international humanitarian law, human rights and refugee law, and international criminal law, including, where applicable, the Rome Statute of the International Criminal Court (ICC)" (United Nations 2012, 16).

However, norms are not exclusively a legal phenomenon. Hence, besides legal normative frameworks, mediators are also bound by non-legal norms, some of them enshrined in the UN Guidance for Effective Mediation (United Nations 2012), African Union Mediation Support Handbook (African Union 2014), Mediation and Dialogue Facilitation in the Organization for Security and Co-operation in Europe (OSCE Conflict Prevention Centre 2014) and other

guidance documents. While the UN Guidance points out the "growing international consensus on some norms", it recognizes that the interpretation of norms depends on the national contexts (United Nations 2012, 16). Thus, any normative framework has to be assessed in the particular context it is applied.

In order to assess what norms are relevant in mediation processes, figure 1 provides a framework to categorize different types of norms that comprise the normative framework for mediation (Hellmüller, Palmiano Federer, and Zeller 2015). It distinguishes between process-related norms (how a mediation process is planned or conducted) and content-related norms (what is or is not negotiated); unsettled and settled norms [norms that cannot be overridden without "special justification" (Raymond 1997, Frost 1996)]; and between non-definitional and definitional norms, the latter being those norms that are at the core of any mediation process and without which a process would not be called mediation anymore.

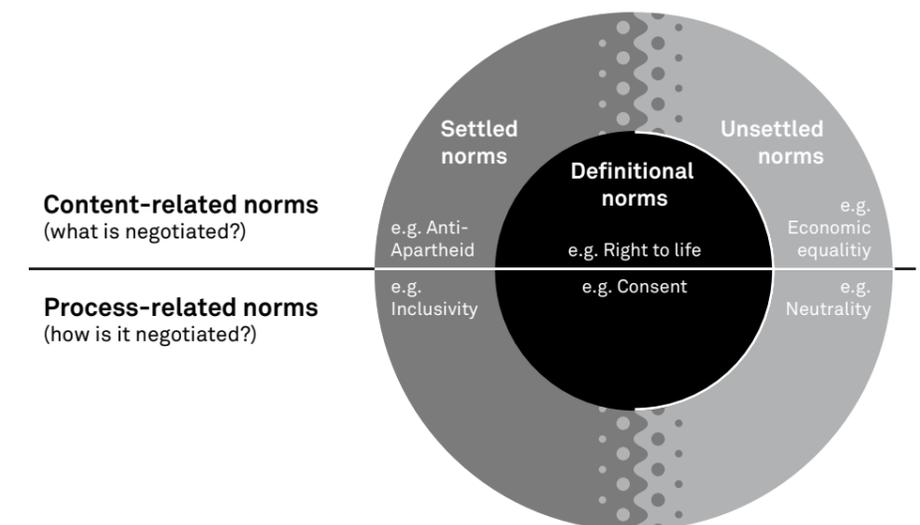


Figure 1: Categorization of norms in a mediation process (Hellmüller, Palmiano Federer, and Zeller 2015)

This categorization can guide the formulation of hypotheses on patterns of norm diffusion and the agency of the mediator. According to the definition of mediation (Bercovitch 2009, 343), the conflict parties have greater agency when it comes to content-related norms, while the mediator often plays a bigger role with regard to process-related norms.⁶ Unsettled norms may be more or less diffused in the mediation process depending on the priorities of the conflict parties, the mediator and the mandate-giver while settled norms have often featured in mediation processes especially when they are closely linked to definitional norms. Lastly, a mediator tries to uphold definitional norms throughout the process as they are vital to the integrity of the mediation process, while non-definitional norms' salience in the peace process varies more widely (Hellmüller, Palmiano Federer, and Zeller 2015).

Do Mediators Promote Norms and How?

The second sub-question analyzes whether mediators promote norms and how. It is operationalized through the investigation into a mediator's normative agency. Drawing further from the constructivist notion of the mutually constitutive relationship between agent and structure, the mediator's normative agency in diffusing norms in mediation processes can be conceptualized in three ways, based on a framework developed by Wight (2006).

Firstly, Spivak's notion of the 'freedom of subjectivity' (Spivak 1996, see Wight 2006) implies the possibility of introspection of a mediator's own position vis-à-vis his or her environment. For the mediators' normative agency, this entails that they have a level of autonomy in making sense of the conflict at hand and the interplay of actors, including themselves (e.g. their interpretation of the conflict, the range of possible solutions, etc.). It also entails the interpretation of the substantive elements of the norms in their mandate (e.g. their judgement on which norms are crucial and which are not, or the elements within a given norm they prioritize over other elements).

Secondly, the notion of 'intentional transformative praxis' originally developed by Bhaskar (2008, 393) indicates not only an action from the normative agent, but also that the action is based on an intention (Wight 2006, 212). For mediators, this can be indicated by their strategy-based actions in that their active promotion of a certain norm is not merely a reaction towards events as they surface, but that there is initiative to promote the norm in the first place and the responses even to unexpected events are guided by an overarching pre-conceived strategy.

Thirdly, this intended action is embodied within a position in which the practice takes place, also termed 'position-place' (Sikkink 2011). This means that a mediator's agency is also indicated by how they utilize their individual (and often fluid) positions in their institutions and the power dynamics between them and the conflict parties in order to carry out their intention. The mediators' position-place can most usefully be ascertained by investigating their legitimacy. In line with Walton (2012, 19–20), this research project considers legitimacy to be a "complex sociological phenomenon to be unravelled through

⁶ In reality, this distinction also depends on whether the style of the mediator is facilitative or directive (Bercovitch 2009).

empirical analysis". This also points to the fact that legitimacy is not given once and for all, but that actors constantly seek to build it. Therefore, it is important to inductively assess what attributes of legitimacy are most salient in the eyes of the conflict parties themselves. As described above, investigating the relationship between the legitimacy of mediators and norm diffusion gives insights into why actors may comply to norms in the absence of coercive power.

Once established, mediators can use their normative agency in four main ways. They can take process-related decisions, advise parties on content-related decisions such as in formulating the draft agreement, ensure outside communication (blame and shame) and create incentives and disincentives for norm-consistent behavior (Bluman-Schroeder 2004, 36).

Through these actions, mediators, by engaging with the parties and other actors in a peace process, engage in dynamic processes that shape and reshape the constitutive elements of a norm as it is diffused. These measures include three forms. First, norm framing, defined as highlighting and creating issues by using terms that label, interpret and dramatize them (Finnemore and Sikkink, 1998). Second, norm grafting, meaning to anchor the norm being promoted on parties' pre-existing strongly held values (Price, 1997). Lastly, norm pruning, leaving out selected constitutive elements of the norm in order to be accommodated more effectively with the target audience (Acharya, 2009).

What Are the Internalized Norms in Mediation Processes?

The last sub-question asks what norms are internalized in a mediation process in the sense that parties adopt norm-consistent behavior. This is not easily established since internalized norms are "hard to discern because actors do not seriously consider or discuss whether to conform" (Finnemore and Sikkink 1998, 904). The research project utilizes the concept of constitutive localization (Acharya 2004, 240), which is a process of "reinterpretation and rerepresentation of the outside norm, including framing and grafting, but may extend into more complex processes of reconstitution to make an outside norm congruent with a pre-existing local normative order" (Acharya 2004, 244).

Local agents, who are neither entirely transnational norm entrepreneurs nor passive norm-takers, play a central role in norm internalization. They directly engage in congruence-building in the process of taking or incorporating the new norms in their local contexts. In this regard, the local agents do not merely adopt norms, but actively remold them to be in line with the existing local normative order. The outcome of constitutive localization is the integration of the external norm at the same time as the reinforcement and congruence-building with existing local beliefs and practices.

Therefore, in this third sub-question, the research project specifically looks at how the norms that are promoted through mediation are re-adapted and re-shaped by the conflict parties and stakeholders in a local context and the possible facilitating role of the mediator in the convergence of these transnational and local norms.⁷

⁷ Where mediators are seen as insiders themselves, which has been the case for many mediation missions of regional organizations (Elgström, Bercovitch, and Skau 2003), mediators can be seen as local agents and constitutive localization could be directly undertaken by them as early as in the process of norm cascade.

Operationalization of the Research Question

The inquiry into the role of mediators as norm entrepreneurs concerns social processes and seeks to show nuances and variations from one case to the other. Thus, it is most appropriately made through qualitative methods using case study and process-tracing methodology.

4.1 Case Studies

Case studies are ideally suited to assess to what extent mediators are norm entrepreneurs because they allow thorough insights into a particular phenomenon (Gerring 2004, 341, see also Levy 2008, 2). In this research project, the case studies vary with regard to the institution mandating a specific mediator. Mason and Sguaitamatti (2011) outline five main types of mandate-givers: the United Nations, inter-governmental (regional) organizations, states, NGOs and organizations headed by eminent individuals. These mandate-givers vary in terms of their normative frameworks.⁸ For the research project, we have chosen three of them, being the most common ones, namely the United Nations, an intergovernmental sub-regional organization and NGOs in order to compare the normative agency of the mediators mandated by them. Based on the focus on mediators as norm entrepreneurs, the mediators themselves are the main unit of analysis.

In each case study, we trace the diffusion of the norm of inclusivity. The UN Guidance for Effective Mediation defines inclusivity as “the extent and manner in which the views and needs of conflict parties and other stakeholders are represented and integrated into the process and outcome of a mediation effort” (United Nations 2012). This definition implies that inclusivity is both a process-related and content-related norm. The choice of inclusivity in the research project is justified by the fact that both academics and practitioners have come to consider it as highly relevant and rarely question it anymore (Lanz 2011, Paffenholz 2014, von Burg 2015). Thus, it can be argued that it is a settled norm forming part of the normative framework in which a mediator acts. However, while there is wide agreement at the level of mandate-givers, the modalities of who is included and excluded at different stages of mediation processes are still subject to intense debates. Indeed, mediators may resist the expansion of the peace process to include other stakeholders arguing that it makes the process more complex and thus postpones an agreement (Wanis-St. John and Kew 2008). The main conflict parties may also be reluctant to extend participation at the negotiation table (Wanis-St. John and Kew 2008, 12–13). This also points to the fact that inclusivity is not a definitional norm, because a process which is not inclusive can still be defined as mediation.

By holding inclusivity constant among the cases, this study aims to generate insights on how its diffusion varied among the different mediation processes. This not only provides insights on the role of inclusivity in mediation, but by assessing how mediators prioritize it (or not) in relation to other norms, it allows answers to the three sub-questions specified above: what norms form part of the normative framework for mediation, whether mediators promote

norms and how and what norms are internalized in mediation processes. For each of the three mandate-givers, we trace the diffusion of inclusivity and its interaction with other norms.

UN Mediation in Syria

First, the UN led mediation processes in numerous conflicts (Mason and Sguaitamatti 2011, 18–20), for example in Afghanistan, Angola, Bougainville, Georgia, Haiti, Nepal, Western Sahara and Syria. In other cases, the UN teamed up with partners, such as in Burundi, Cambodia, Democratic Republic of Congo, Somalia, Sudan and Uganda. The UN enjoys specific legitimacy to mandate mediators based on its almost universal membership as well as on its charter. Article 2, §3 requires member states to settle disputes by peaceful means, article 33 equally holds that states are required to peacefully settle their disputes if their continuance is likely to threaten international peace and security and article 99 confers to the Secretary-General good offices responsibilities. Most often, the Secretary-General appoints mediators as Special Representatives or Special Envoys. The UN Security Council then further specifies their mandate. The UN also has a Mediation Support Unit that supports mediators through training, guidance, research and institutional knowledge. Thereby, it also contributes to shaping the normative framework in which UN mediators act.

Most recently, the UN has played a key role in mediating the Syrian conflict. The research project analyzes the changing normative agency of mediators with regard to inclusivity in the Syrian case from Kofi Annan to Lakhdar Brahimi to Staffan de Mistura. The mandate-giver changed from a joint UN-Arab League mediation to a UN mediation and arguably inclusivity has become increasingly settled since 2012. Against this backdrop, the case study compares the choices of the three mediators with regard to which actors to include at which stage of the mediation process, how it has influenced their own as well as the process' legitimacy in the perception of the conflict parties and how the latter respond to and adapt these norms.

IGAD Mediation in South Sudan

Second, regional and sub-regional organizations have increasingly engaged in mediation since the end of the Cold War. The African Union (AU) and the continents' sub-regional organizations, such as the Southern African Development Community (SADC), the Intergovernmental Authority on Development (IGAD) and the Economic Community of West African States (ECOWAS), have led various peace talks, for instance in Burundi, Comoros, the Ivory Coast, Guinea, Burkina Faso, Madagascar and South Sudan. The AU, in cooperation with the sub-regional organizations, has begun to develop an overarching framework, the African Peace and Security Council, with the aim of having a more systematic and institutional approach to mediation. Despite these efforts, the actual practice of mediation by African intergovernmental organizations has largely remained ad-hoc and anchored on elite personalities of the mediators or the leverage of the state(s) leading the sub-regional organization in the mission.

⁸ See Nathan for a discussion of the effects of different types of mandates on the mediation process.

The research project examines the agency of the Special Envoys mandated by the Intergovernmental Authority for Development (IGAD) to mediate in South Sudan. IGAD placed a high imperative to expand the negotiations beyond the two warring parties, the Government of South Sudan and the Sudan People's Liberation Movement /Army in Opposition (SPLM-IO), and to include former political detainees, civil society organizations, faith-based groups and other stakeholders. This mandate manifested to an extent in the negotiation processes and its outcome documents. Upon first examination, the efforts of these regional mediators are not only bounded by international norms and conventions, but also by an imperative to uphold regional norms such as (but not limited to) the AU prohibition on unconstitutional changes in government (Nathan 2013) and the ownership of the regional organization in the peace process (Francis 2005). These regional norms at times conflict with inclusivity. For example, the AU prohibition on unconstitutional changes in government has served as grounds for AU member states not to support talks that include armed groups that have gained control of the government through force.

The case study on South Sudan assesses the dynamics between these regional norms and inclusivity with a focus on the role of the mediator in striking a balance between them. Within the norm localization framework, the study examines two potential entrepreneurial roles for the IGAD mediators. First, they may facilitate local agents to engage in the peace process and formulate more inclusive mechanisms in the agreement. Second, IGAD mediators may be local agents in their own right, using their regional status and insider knowledge of regional dynamics to institutionalize inclusivity and strengthen its links with other more strongly supported norms in the region.

NGO Mediation in Myanmar

Third, NGOs have played active mediation roles in armed conflicts, most prominently in South East Asian peace processes such as in Myanmar, the Philippines and Indonesia. International NGOs specializing in mediation and conflict resolution range from institutions such as the Centre for Humanitarian Dialogue, the Crisis Management Initiative, the Center for Peace and Conflict Studies, Intermediate, Conciliation Resources and the Dialogue Advisory Group to faith-based organizations such as Community of Sant'Egidio and Muhammadiyah, as well as organizations led by prominent individuals such as the Carter Center and the Kofi Annan Foundation. These organizations have sent individuals to directly engage with conflict parties in ongoing peace processes.

Due to their relative lack of political power vis-à-vis states, regional organizations and the UN, NGO mediators often work discreetly behind the scenes and early on in the process. This lack of political leverage can afford them a high degree of flexibility and access when working with conflict parties, as their normative frameworks are more tacit and diffused. This creates greater room for manoeuvre when it comes to contentious norms such as engaging with proscribed or illegal armed groups. This political flexibility

combined with their inherent moral authority, technical expertise and access to resources can create an alternative type of 'NGO legitimacy' for conflict parties that are less willing to internationalize conflicts through an external third party. In these situations, NGO mediators play important informal and unofficial roles in conflict contexts that are sensitive to external intervention.

The research project examines how NGO mediators use their legitimacy to promote the inclusion of excluded armed groups in mediation processes. Through this engagement, they promote their own interpretation of the inclusivity norm, namely that engaging with all relevant armed groups, excluded or not, is not only possible, but often necessary. The research project investigates the case of Myanmar. As the national peace process actors in Myanmar have chosen not to have external and official third party peace mediation, NGOs directly engage with conflict parties. These informal modalities under which mediation activities take place present an interesting case for investigation.

The three cases will provide in-depth within-case studies of the mediators' normative agency, particularly with regard to the norm of inclusivity. Moreover, a cross-case analysis will shed light on how the approaches taken by the different mediators towards the inclusivity norm compare.

4.2 Process-tracing

The project conducts process-tracing at the within-case level. Process-tracing can be defined as "attempts to identify the intervening causal process [...] between an independent variable (or variables) and the outcome of the dependent variable" (George and Bennett 2005, 206). As Berman (2001, 244) says, process-tracing "involves reconstructing actors' motivations, as well as their definitions and evaluations of situations". This is highly relevant for the research project, because whereas models of norm diffusion, such as the life cycle model mentioned above, exist, the processes through which norms are diffused are usually not traced in-depth. However, even if actors start to behave in a congruent way to a given norm, it does not mean that it was the norm that caused the behavior change in the first place (George and Bennett 2005, 207, Bennett and Checkel 2015, 18). Process-tracing helps to overcome this challenge. It is on the one hand founded on careful description as it "inherently analyses trajectories of change" (Collier 2011, 823). On the other hand, it "gives close attention to sequences of independent, dependent, and intervening variables" (Collier 2011, 823) and thus minimizes the risk of confusing correlation and causation (Checkel 1999, 85, Rohlfing 2012).⁹

This research project traces the process of how mediators contribute to constitutive localization of inclusivity in a given mediation process along the three sub-questions mentioned above. First, it examines the overall normative environment in sub-question 1 and analyzes how the mandate-givers, the mediator as well as the conflict parties place inclusivity within the categorization of norms suggested above (context-/process-related, settled/unsettled,

⁹ It is sometimes argued that causal mechanisms and constructivism are not compatible. This project takes a different approach. A constructivist ontology "turns interpretation into an intrinsic part of a scientific enterprise that seeks to explain the social construction of reality" (Adler 1997, 328). This leads to subjectivist epistemologies (Guba and Lincoln 2005, 193), which allow for a view on causality in which reasons are seen as causes (Davidson 1963). Any attempt to understand the intersubjective meanings embedded in social life is at the same time an "attempt to explain why people act the way they do" (Gibbons 1987, 3). In that context, norms and rules "structure and therefore socially constitute – 'cause' – the things people do" (Finnemore 1996, 28).

definitional/non-definitional) at the outset of the period under study and what it means for its prioritization vis-à-vis other norms.

Sub-question 2 analyzes the independent variable being the mediator’s mandate to promote inclusivity. It does so by assessing both the main components of a mediator’s normative agency (freedom of subjectivity, intentional transformative praxis, position-place) as well as the four main activities through which mediators can promote norms (take process-related decisions, advise parties on content-related decisions, ensure outside communication (blame and shame), create incentives and disincentives for norm-consistent behavior). Most importantly, through these activities mediators engage in processes that modify the substance of the inclusivity norm (framing, pruning) and/or strengthen its link with more strongly supported norms (grafting) as it is diffused.

Lastly, sub-question 3 links the mediator’s actions as the hypothesized cause of the norm-consistent behavior of conflict parties indicating their internalization of the norm. Internalization means a change in terms of how conflict parties categorize inclusivity in the analytical framework presented above, namely a move from an unsettled to a settled norm in the context of a given mediation process. Thus, it involves a comparison of the categorization of norms at the outset and the end of the process.

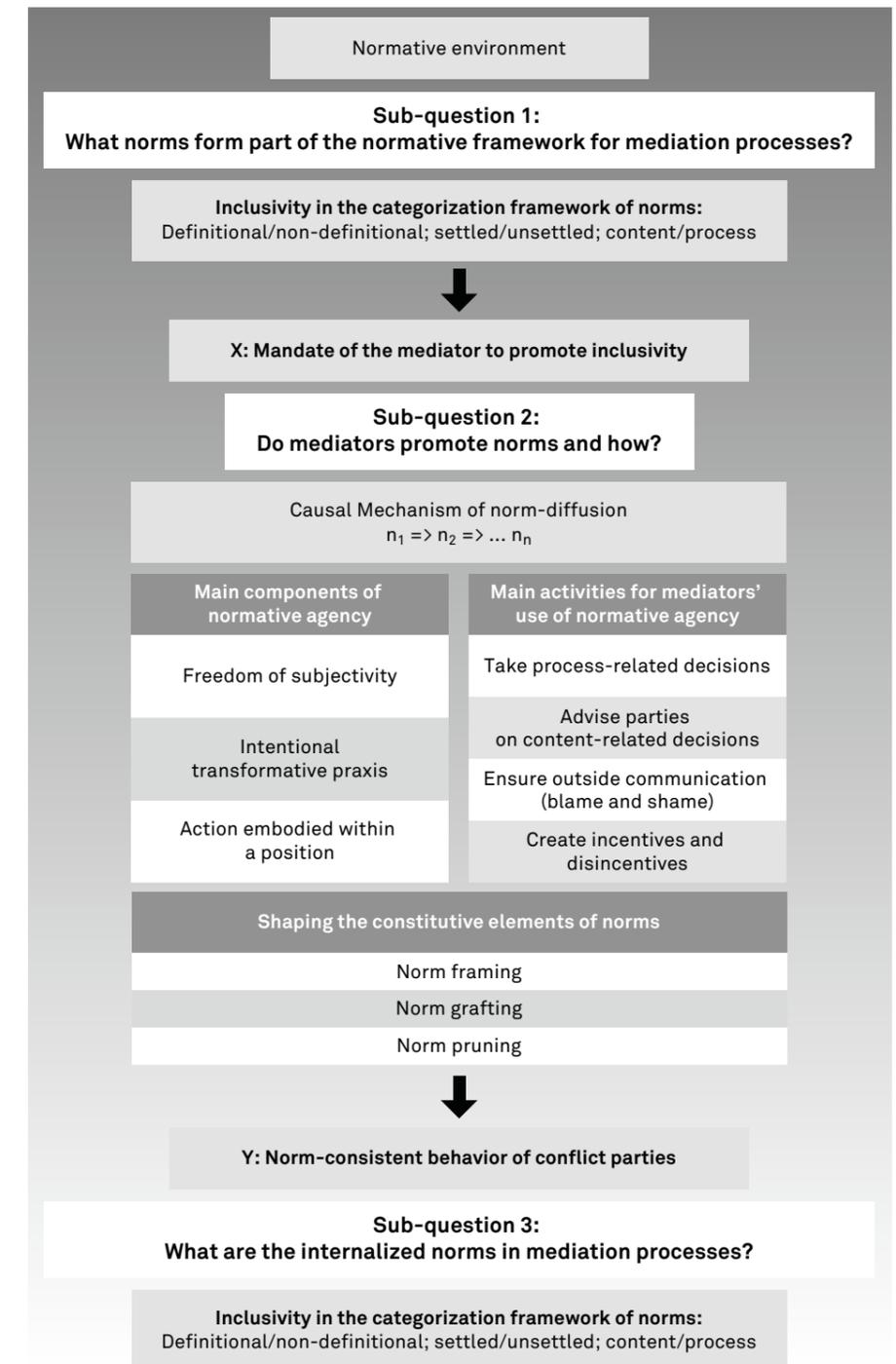


Figure 2: Overview of process-tracing method in the research project “Are Mediators Norm Entrepreneurs?”.

5

Conclusion

The research project links the constructivist literature on norms with the mediation literature. Thereby, it makes three important contributions. First, with regard to the norms literature, it allows for norm non-diffusion as well as changes to norms as they are diffused and it focuses on agents, rather than structures, examining the agency of mediators. Second, by analyzing the ideational role of mediators as norm entrepreneurs it adds academic insights to a highly under-researched topic of study. Third, it creates a nexus between legitimacy, norm diffusion and mediation. Thus, one of the main impacts of the study lies in its cumulative contribution to scientific debates on norm diffusion and mediation.

At the same time, the research project assesses a question highly relevant for mediation practice. The normative framework in which mediation takes place is growing. While the debates have largely focused on either requiring mediators to promote specific norms or calling for more pragmatism with regard to the demands addressed at mediators, no study exists to date that empirically assesses the influence that mediators have in norm diffusion. The research project provides first-hand data on specific cases and thereby adds empirical evidence to the often merely prescriptive and policy-based debate. It therefore enhances the understanding of the role of mediators in norm diffusion.

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Guidance on Gender and Inclusive Mediation Strategies



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In 2013, when few formal mediation processes had effectively included women, the UN Department of Political Affairs (DPA) developed a curriculum based on interviews with 30 mediators and initiated a series of High-level Seminars on Gender and Inclusive Mediation Processes. Hosted by the Governments of Norway and Finland and their respective implementing partners the Peace Research Institute Oslo (PRIO) and the Crisis Management Initiative (CMI), the seminars provided a space to explore alternative ways of designing more inclusive and effective peace processes. This Guidance draws on the seminar materials and guidance notes and feedback provided by seminar participants and senior mediation experts, including UN envoys and members of the UN Standby Team of mediation advisers. The Department of Political Affairs is grateful for the support of these partners and for the financial support provided by its donors through its Multi-Year Appeal.

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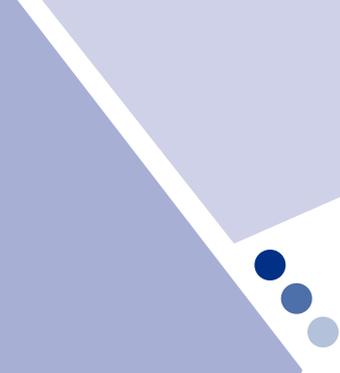
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Part I: Introduction

I. Introduction

Mediation is identified by Article 33 of the Charter of the United Nations as a means for the peaceful settlement of disputes.ⁱ It is a process whereby a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements. Mediation, which has proven to be an effective instrument in both inter-state and intra-state conflict, is a voluntary endeavour that varies in scope, sometimes tackling a specific issue in order to contain or manage a conflict and sometimes tackling a broad range of issues within a comprehensive peace process. Such processes offer a critical opportunity for states and societies to reshape their political, security and socio-economic landscapes in order to lay the foundation for a sustainable peace.

Security Council Resolution (SCR) 1325 on Women and Peace and Security, adopted in 2000, was the first resolution to link women to peace and security, acknowledging that armed conflicts impact women and girls differently from men and boys. The 1325 agenda, driven by grassroots organizations and by women living in war and working for peace, recognizes the role and contributions of women in wartime and to peacemaking, as well as their fundamental right to be included in peace processes. The participation of women-led civil society groups and the need to address the different needs of women and men in relief, recovery, and post-conflict efforts were key motivating factors for the advocates behind the resolution.

In the following 15 years, seven further resolutions of the UN Security Council and three resolutions of the General Assembly have called for greater and more effective participation of women in conflict mediation processes; for the inclusion of dedicated gender expertise in all peacemaking efforts; for the specific needs and concerns of women and girls to be addressed; and for the prevention of conflict-related sexual violence. Even so, the participation of women in mediation processes and the gender sensitivity of peace agreements have increased only gradually, demonstrating a need for greater efforts to bridge the gap between aspirational global and regional commitments and the lived experience of women in conflict and peace processes.ⁱⁱ

ⁱ This Guidance builds on the UN Guidance for Effective Mediation (2012).

ⁱⁱ See the Report of the High-Level Independent Panel on United Nations Peace Operations, the Review of the United Nations Peacebuilding Architecture, and the Global Study on the Implementation of Security Council Resolution 1325 (2000), all published in 2015.

The *UN Guidance for Effective Mediation* (2012) defines “inclusivity” as the extent and manner in which the views and needs of conflict parties and other stakeholders are represented and integrated into the process and outcome of a mediation effort. Inclusive mediation rests on the assumption that building sustainable peace requires integrating diverse societal perspectives, those of conflicting parties and other stakeholders, into the peace process. Inclusive processes will provide multiple entry points and diverse mechanisms for participation. Broader constituencies increase the potential to identify and address the root causes of conflict and to ensure that the needs of those affected by the conflict are addressed. An inclusive process, however, does not imply that all stakeholders can participate directly in formal negotiations; it will rather facilitate a structured interaction between the conflict parties and other stakeholders to include multiple perspectives in the mediation process.

The call for inclusion in mediation processes is not limited to women, but applies to social, demographic, religious and regional minority identities as well as to youth and to organized civil society and professional organizations. In response to increasing demand for targeted expertise in this area from mediation actors and the international community more broadly, the focus of this *UN DPA Guidance on Gender and Inclusive Mediation Strategies*, however, is the gender dimension of inclusivity.

With this focus, the Guidance seeks to enhance gender-sensitive mediation capacity at international, regional and national levels and to create more consultative mediation processes through the promotion of both the effective participation of women and gender sensitivity in the design and substance of peace agreements. It gives an overview of the relevant normative frameworks and modalities by which women participate in mediation processes as part of mediation teams, conflict party delegations and civil society organizations (CSOs). It also offers practical strategies and tools for mediators and their teams working to prepare and design gender-sensitive mediation strategies, as well as recommendations on gender-sensitive provisions within peace agreements.

The Guidance aims to be of utility to UN envoys, senior mediators and their teams engaged in or contemplating formal peace processes; UN partners in mediation efforts, including representatives of regional organizations, Member States and civil society organizations; as well as, critically, conflict parties. It recognizes that mediation is a complex endeavour, whose outcomes will be

determined by many different factors, including the regional and international environment; that not all conflicts are amenable to mediation; and that while mediators may have significant room to make procedural proposals, the scope for substantive recommendations varies and can change over time.ⁱⁱⁱ

Gender, Inclusive Mediation and Sustainable Peace

Gender refers to the social attributes, challenges and opportunities as well as relationships associated with being male and female. These are constructed and learned through socialization; they are context- and time-specific and changeable. Gender affects power relations in society and determines what is expected, allowed and valued in a woman and a man in a given context. A culturally informed approach is of particular importance when promoting the effective participation of women in a peace process, as gender relations are perceived differently in different cultures.

Women and girls play varied roles during violent conflict. Women may be combatants or provide services to combatants, or they may be peacebuilders working to resolve conflicts in their communities. When men are absent, injured or killed, women take over as breadwinners, decision-makers and often become more active in public life. Women leaders can also be effective peacemakers at the community level. Yet, women and girls tend to be identified first and foremost as victims of violence, as they constitute the majority of the world's internally displaced and refugees, and are at risk of grave physical harm, including conflict-related sexual violence. A rights-based attention to their needs is of paramount importance, but should not overshadow the active roles women play in conflict situations.

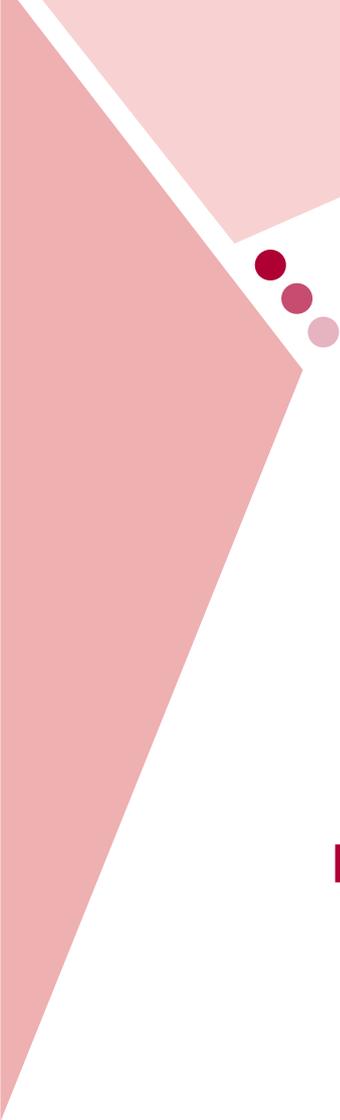
Conflict dynamics tend to change gender relations, both positively and negatively. In wartime, women may acquire different social and political roles, gaining access to opportunity, leadership and decision-making within their communities when men are away, engaged in or escaping from the armed conflict. This can enhance their ability to mobilize constituencies and advocate with combatants for an end to the violence. Recognition also needs to be given to the role and participation of young women. Young women are frequently part of movements demanding change, but tend to be excluded from peace and transition processes, which, if they include women at all, will commonly engage older and better-connected woman leaders.

iii See UN Guidance on Effective Mediation (2012)

This Guidance builds on the premise that mediation strategies that systematically include women, and civil society more broadly, are more likely to generate broad national ownership and support for a negotiated settlement and to lead to a more sustainable peace. Drawing on the body of research and practice developed in the framework of SCR 1325,^{iv} it holds that:

- Women’s participation can expand the range of domestic constituencies engaged in a peace process, strengthening its legitimacy and credibility.
- Women’s perspectives bring a different understanding of the causes and consequences of conflict, generating more comprehensive and potentially targeted proposals for its resolution.
- Peace agreements that are responsive to the specific needs of women and girls, men and boys, contribute to sustainable peace.

iv Including Nilsson, D., “Anchoring the Peace: Civil Society Actors in Peace Accord and Durable Peace” (2011), in *International Interactions: Empirical and Theoretical Research in International Relations*, 38:2; Paffenholz, T., “Results on Women and Gender”, Briefing Paper. (2015), Centre on Conflict, Development and Peacebuilding and Graduate Institute of International and Development Studies, Geneva, <http://graduateinstitute.ch>; and *Preventing Conflict, Transforming Justice, Securing the Peace: The Global Study on the Implementation of Security Council resolution 1325 (2000)*.



Part II:
**International Normative
Frameworks on Women,
Peace and Security**

II. International Normative Frameworks on Women, Peace and Security

Mediators conduct their work on the basis of the consent of the negotiating parties and – in many but not all formal processes – the mandate(s) they receive from the appointing entity. UN Mediators work within the framework of the Charter of the UN, relevant Security Council and General Assembly resolutions and the Organization’s rules and regulations, global and regional conventions, as well as the international humanitarian, criminal, and human rights law applicable in a given situation.

Eight Security Council Resolutions (SCR) provide a framework for the United Nations and Member States to promote the women, peace and security agenda. These can be divided into two categories. Four resolutions on women, peace and security promote women’s active and effective participation in peacemaking and peacebuilding. The foundational SCR 1325 (2000) recognizes the impact of conflict on women and their role in preventing and resolving conflict and calls for women’s equal participation in peacemaking efforts. The subsequent resolutions urge mediators to have women and women’s civil society organizations effectively represented in peace processes and institutions, and to ensure adequate protection and funding for their needs. The resolutions also lay out a mechanism for regular monitoring and reporting on the implementation of SCR 1325 and call for an active role of the senior UN leadership and increased accountability.^v Three UN General Assembly resolutions addressing the need to strengthen the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution cross-reference these four resolutions to endorse the need for mediation to incorporate the women, peace and security agenda.^{vi}

The second group of four resolutions, starting with the adoption of SCR 1820 in 2008, aims to prevent and address conflict-related sexual violence. SCR 1820 (2008) acknowledges that conflict-related sexual violence, when used as a method or tactic of war, can pose a threat to international peace and

v S/RES/1325 (2000), S/RES/1889 (2009), S/RES/2122 (2013) and S/RES/2242 (2015); as well as A/RES/65/283 (2011), A/RES/68/303 (2014) and A/RES/70/304 (2016).

vi There are additional Women, Peace and Security policy frameworks and programmes, such as those adopted by regional organizations (see, for example, that of the African Union, available at <http://www.un.org/en/africa/osaa/pdf/pubs/2016womenpeacesecurity-auc.pdf>), as well as human rights instruments such as the The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). At the national level, 64 countries have adopted National Action Plans on SCR 1325 (2000), as of November 2016.

security, and, depending on the context, may constitute a war crime, a crime against humanity or an act of genocide. Subsequent resolutions called for: the appointment of an Special Representative to the Secretary-General (SRSG) to provide dedicated UN leadership on this issue and the deployment of Women Protection Advisers in mission settings; accountability mechanisms and judicial expertise; and monitoring and reporting arrangements. In 2012, DPA published *Guidance for Mediators Addressing Conflict-related Sexual Violence in Ceasefire and Peace Agreements*, which will be cross-referenced in this Guidance.^{viii}

Regional and sub-regional organizations, such as the African Union, the European Union, the Organization for Security and Cooperation in Europe and the Economic Community of West African States have adopted region-specific agendas or action plans to integrate the SCR 1325 (2000) commitments in continental, regional and national legal and policy instruments and programmes, and to set up annual reporting mechanisms on women's empowerment and equality.

Consistency with international law and other norms contributes to bolstering the legitimacy of a peace process and may help marshal international support for implementation. Under international humanitarian law, the Geneva Conventions extend specific protection measures to women in armed conflict situations.^{ix} Under human rights law, especially the International Covenant on Civil and Political Rights, all forms of slavery, torture, and inhuman or degrading treatment and the right to be free of these abuses are explicitly denounced.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) prohibits discrimination and disparaging treatment on the basis of gender. Two CEDAW recommendations provide particular guidance on the application of temporary special measures to promote the participation of women (recommendation 25) and on the role of women in conflict prevention, conflict and post-conflict situations (recommendation 30).^x

vii S/RES/1820 (2008), S/RES/1888 (2009), S/RES/1960 (2010) and S/RES/2106 (2013).

viii The development of this Guidance for mediators benefited from the materials generated in the United Nations Inter-Agency High-Level Colloquium "Conflict-Related Sexual Violence and Peace Negotiations: Implementing Security Council Resolution 1820" and was produced with financial support from UN Action Against Sexual Violence in Conflict.

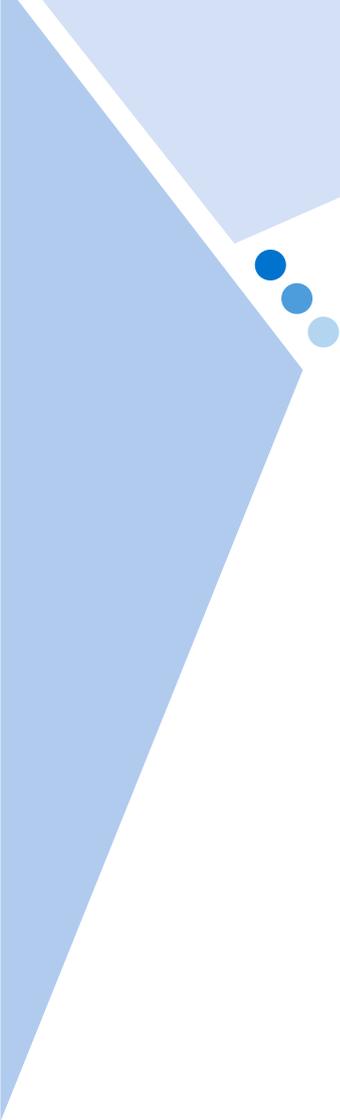
ix Specifically, article 27 of the Geneva Convention (IV) of August 12, 1949, Article 76(1) of Additional Protocol I and Article 4(2) of Additional Protocol (II) to the Geneva Conventions adopted in 1977.

x See CEDAW/C/GC/25 and CEDAW/C/GC/30

Guidance on core UN Gender Inclusive Mediation Commitments

Mediators and their teams should:

- Use normative and legal frameworks (including relevant regional and national frameworks) to promote the **effective participation of women** in the peaceful settlement of disputes, particularly in formal conflict mediation processes.
- Develop and resource concrete **strategies on gender and mediation** to increase the meaningful inclusion of women, particularly at the senior level in formal peace negotiations.
- Provide **gender and inclusion expertise** to all mediation processes from the onset.
- Engage **parties to armed conflict** in dialogue to seek time-bound commitments to cease all acts of conflict-related sexual violence, in compliance with international law.
- Conduct **systematic consultations with civil society**, women's organizations and survivors of sexual violence in all peacemaking efforts.
- Encourage parties to increase **women's political participation** (elected and appointed), including through the promotion of temporary special measures (TSMs), such as quotas, where relevant.
- Encourage the incorporation of **gender-relevant language and provisions** in all ceasefire and peace agreements.



Part III: Mediation Preparation

III. Mediation Preparation

Preparedness

The strategy for an effective mediation process takes into account the specificity of the conflict; the causes and dynamics of the conflict; the positions, interests and coherence of the parties; the needs of the broader society; as well as the regional and international environments, which will play critical roles in the viability of the mediation effort. Mediation preparedness combines the individual knowledge and skills of a mediator with a competent and cohesive team of specialists, as well as the necessary political, financial and administrative support from the mediating entity or entities. It enables the mediator to guide, navigate and monitor the process and helps strengthen the capacity of the conflict parties and other stakeholders to reach a negotiated agreement, manage expectations and galvanize support (including from international actors) for the implementation phase.

Mandating entities and mediators can send an important signal to the conflict parties when they demonstrate inclusivity in the composition of their mediation teams and reflect it in their actions. Consideration should be given to the following options when selecting and preparing mediators and mediation support teams:

- Appointing women as lead mediators.
- Aiming for gender parity in the mediation support team.
- Ensuring that all team members have a good understanding of the gender dimensions of their thematic or geographic areas of expertise.
- Including gender and mediation expertise in the mediation team or engaging external expertise.
- Organizing context-specific gender and inclusion workshops for the mediation team at the start of the mediation process and when specific issues of the conflict are negotiated.

Gender-sensitive Conflict Analysis

Gender-sensitive conflict analysis is a first and essential step towards a gender-sensitive mediation process. Conflict analysis is the systematic study of the structures, stakeholders and dynamics of conflict to provide a better understanding of the causes, triggers and forces promoting either violent conflict or peace. Gender perspectives should be applied throughout the conflict analysis process. The analysis needs to go beyond documentation of practices of discrimination, exclusion and the gendered impacts of conflict and assess underlying gender dynamics – the political and economic power dynamics between men and women within a society – and their links to peace and security. It should also help identify opportunities and capacities for peacemaking.

Relations between men and women intersect with many other elements of social cleavage, such as class, race, ethnicity, geographical location, economic inequality and access to resources. Sexual and gender-based violence against women or men can trigger violent defensive reactions or acts of vengeance, e.g. when armed groups systematically commit acts of sexual violence against particular groups, creating a cycle of violence. The analysis should also assess whether the (informal) influence of women may have increased when they take on social and political leadership roles in their communities during men's absence as result of the armed conflict.

Consultations, Engagement Strategies and Strategic Partnerships

Mediation teams with the mandate to address an extensive range of issues need to speak with a broad range of stakeholders to forge understanding of the situational dynamics and perspectives that contribute to a conflict context. Local and community-based actors, including women's groups, should be engaged in this process. In consultation with women leaders and their organizations, mediators should develop a strategy for outreach to/the involvement of Track II actors at the start of the mediation process in order to encourage broad support for a mediated solution of the conflict.

Women hold many different roles in a conflict setting – as combatants; as supporters, mothers, sisters or wives of combatants; as business owners, teachers, politicians etc – and can serve as a resource on many aspects of a

conflict besides their specific (immediate) needs. In addition to the inclusion of women in the process in their own right, it is important to assess how women have been involved in preventing and resolving conflict within their societies and to consider how to incorporate these experiences within a peace process. Mediation teams should solicit guidance from women's groups and networks, and consult gender experts for advice on how to engage with customary and religious traditions appropriately. These insights will contribute to a more comprehensive understanding of the situation and enhance the ability of the mediators to explore alternative proposals for the resolution of the conflict.

More broadly civil society organizations (CSOs) including women's groups, can play a critical role in increasing the legitimacy and quality of a peace process.^{xi} CSOs active in peacebuilding are potentially important assets, as conflict parties cannot be assumed to always represent the interests of the wider population. However, CSOs – which are not by definition inclusive of women – can also be hardliners, partial to conflict parties or reject a mediated end to the conflict. Mediators are advised to initiate consultations with CSOs from the outset. While in some very violent contexts a ceasefire may need to take the form of an exclusive interim arrangement before the process can be expanded to include other actors, gender perspectives still need to be taken on board. Mediation efforts involving only armed groups risk signalling that violence is rewarded, and can generate resentment within other sectors of society or, perversely, encourage other parties to resort to violent means in order also to get a place at the negotiation table.

Inclusive mediation processes invariably add complexity and require careful planning in order to ensure that adequate resources are in place to conduct broad consultations at the mediation's start-up. Mediation teams should identify logistical, security, financial and other constraints preventing actors from participating, conscious that these will frequently be of a different nature for women.

xi “Civil society organization” is a broad inclusive term comprising non-governmental organizations, charities, trusts, foundations, advocacy groups and national and international associations.

Coherence, Coordination and Complementarity

In international conflict mediation, UN entities, regional organizations or Member States formulating the mediation mandate or financing the mediation can strongly influence the process. Coherence tends to increase when the different mediation approaches and actors are acting in support of a lead mediator. The increasing number and range of actors involved in promoting inclusivity and gender equality in peace processes makes coordination of mediation and mediation support efforts essential, but challenging; complementarity can be enhanced through a clear division of labour based on the comparative advantages among mediation actors operating at different levels.

Coherence, coordination and complementarity also pertains to aspects of the process related to gender inclusivity, such as the conduct of consultations with women’s organizations and other Track II actors and building mediation capacity with respective national partners. Joint partnership strategies and trainings and guidance to develop dedicated gender inclusive mediation expertise can all be helpful.

Women peace lobbyists, often with support from global advocacy networks, can play an important role in advancing inclusivity by offering alternative approaches and holding mediation actors and conflict parties to account. An active engagement strategy with women peace lobbyists can enable mediators and their teams jointly to seek more amenable and innovative solutions to enhance the effective participation of women, including, in some circumstances, supporting a mediator by taking on a direct advocacy role with the parties.

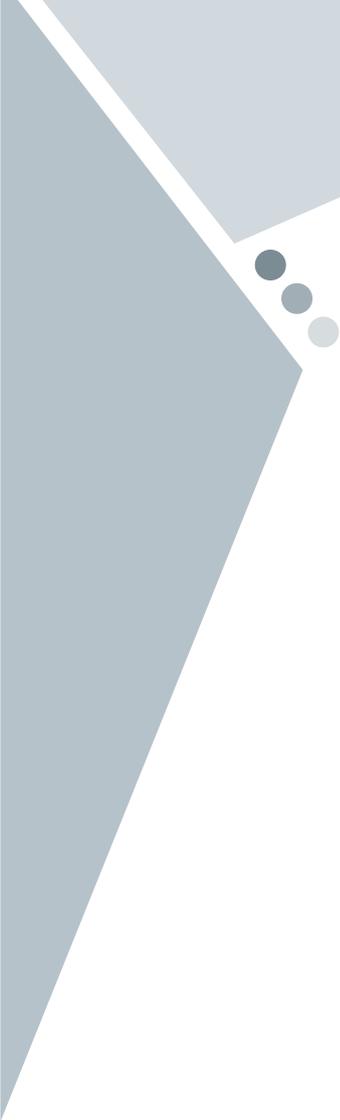
Good practice indicates that international contact groups or “friends of mediation” forums, comprising Member States and relevant international and regional actors, can play an important role in the advocacy and coordination of efforts to promote effective participation of women. These groups could also be called upon to consider providing dedicated funding to civil society organizations in conflict and post-conflict situations, and women’s organizations in particular, as called for in UN Security Council Resolutions on Women Peace and Security.^{xii}

xii SCR 2122 (2013) OP7b and SCR 2242 (2015) OP3.

Guidance on Mediation Preparation

Mediating entities, mediators and their teams should:

- Select a mediator with the knowledge, skills and experience in the specific conflict situation; women candidates should be actively identified and considered in the selection of lead mediators.
- Be strategic when composing a **mediation support team**; aim for gender parity, include gender expertise and ensure or instil, as needed, gender inclusive mediation expertise among all team members through training workshops and guidance materials.
- Undertake **gender-sensitive conflict** analysis and regular internal assessments of the process in order to make adjustments to the mediation strategies, as needed, including by:
 - Assessing the **differentiated impact** of armed conflict on men and women and acknowledging that **gender dynamics** create unique opportunities and challenges for peacemaking.
 - Analysing the many **different roles of women** in conflict (from combatant to peacemaker) and exploring the types of knowledge, information and networks they may offer.
 - Exploring how **normative frameworks and cultural settings**, the country's position on international/regional and national normative frameworks and regional good practices can assist the mediator in promoting inclusive mediation.
- Prepare to deal with **opposition to inclusive mediation approaches**, e.g. assess how culture or local traditions affect opportunities for women's participation in mediation processes.
- Ensure consistent **political and financial support** for the effective participation of women in the mediation process, e.g. through coordination mechanisms among international actors. Consider constraints for women's participation such as security needs, chaperones, family obligations, meeting hours etc.
- Acknowledge the role of **international contact groups** in advocating for and coordinating efforts to promote the effective participation of women and call on these groups to harmonize efforts to build the capacity of and provide dedicated funding to support women's civil society organizations.



Part IV: **Process Design**

IV. Process Design

Inclusive Process Design

Mediation process design refers to the formulation of a plan/strategy on the approach and organization of the mediation, in order to facilitate a successful resolution or management of a conflict. An inclusive process is more likely to identify and address the root causes of conflict and ensure that the needs of the affected sectors of the population are addressed. It can also deepen national ownership, engaging communities who have suffered the impact of the conflict and other sectors of society who must work towards a peaceful future.

Inclusive process design creates multiple entry points and diverse mechanisms for participation. It involves systematic outreach to integrate the perspectives of conflict parties and of other stakeholders, particularly women, and to create new constituencies for peace. The urgency of reaching an initial ceasefire agreement, however, may in some instances result in a more limited participation in the early stages of a process. Balancing the humanitarian imperative to stop the killing with the demands of conflict parties and normative commitments is a complex task for mediators.

Mediators need to promote understanding among conflict parties of the value of the broad participation of women. They must recognize, however, that conflict parties will largely determine who, how and when different actors are brought into the process. Mediators can nonetheless encourage conflict parties to include senior women in their delegations and to convene regular consultations with women representatives, for example by:

- Encouraging the conflict parties to include at least one-third senior women representatives in their negotiating delegations.
- Considering design options such as granting conflict parties extra seats at the table to be filled by women.
- Assisting the conflict parties in regularly convening consultations with their constituencies, including women representatives.

Ensuring equal access to funding, space, facilitation and security for women delegates of conflict parties, as well as for women participating in Track II processes, will further help to facilitate more effective participation. Threats to their physical security are a major constraint for women, an issue which requires careful consideration by the mediation team. Options include:

- Providing physical protection to women delegates engaged in formal talks, but also to women participating in dialogue and technical meetings.
- Organizing support facilities, like child care and additional related costs, to allow women delegates to attend all sessions, and planning meetings at hours that facilitate maximum participation of women.
- Enabling women delegates to participate in trainings and to meet separately or across parties to determine and strategize on shared interests and priorities.
- Providing equal funding (e.g. for airfare, hotel, meals and incidentals) to party representatives, regardless of their gender.

Multi-track Engagement

Mediation processes become more complex when the consultation base expands and multiple forums are used to engage actors at different levels. Mediators may have to grapple with the potential tension between inclusivity and a timely resolution of conflict. It may also be difficult to engage interest groups that are not easily defined or lack clear leadership, such as social movements, youth, and women's groups, which are not organized constituencies such as political parties or armed movements. This puts a premium on stakeholder mapping, planning and management of the process.

Women leaders and civil society representatives perform a variety of roles in a mediation process: they can be members of party delegations, technical advisers, observers, members of special committees to advise the mediator or delegates to a separate but linked Track II process. Or they can be their own grouping influencing a mediation process. Mediators and conflict parties are advised to actively explore different options for women's representation in multi-track processes, including:

- Convening a women’s advisory committee to the mediator to ensure that women have the mediator’s ear and are invited to provide inputs to the mediator.
- Creating structures for dialogue and negotiation to allow women civil society groups underrepresented in the formal talks to communicate with conflict parties and mediators and their teams.
- Initiating civil society forums with representatives from trade unions, business sector, human rights groups, women’s organization, religious institutions, indigenous groups, etc. to give the general public a chance to be heard and linked to the mediation process and to attempt to address their concerns.
- Linking up with national/local peace initiatives that are commonly called upon to resolve disputes and to promote dialogue, trust and peace within communities.
- Identifying women leaders and organizations early in the mediation process to be members of the implementation bodies of the future peace agreement or to support and promote its equitable implementation.

Women and their organizations may have distinct political affiliations, reflecting the divisions within their societies. Mediators and conflict parties considering which women’s representatives to involve in a multi-track process will therefore want to assess who their organizations are representing and what their specific interests and contributions to the mediation process can be. Transparent and consistent selection procedures are crucial for enhancing the legitimacy of a multi-track mediation effort – without them there is a risk of deepening rifts. Careful consideration should be given to:

- Criteria for selection (political, demographic, geographic, etc.).
- Modes of selection (self-selection, designation, election, etc.).
- Responsibility for selection (insiders, outsiders, or both).
- Modes of participation (direct, indirect, observer, etc.).

Outreach towards women and the society at large can increase support for the mediation effort and include more representative voices with different constituencies. This in turn can assist conflict parties and mediators in generating buy-in and a sense of ownership of the process, as well as stronger and more sustainable agreements. Formulating a two-way communication strategy – i.e. informing the wider society of the mediation progress and soliciting suggestions for consideration at the table – is an important means of building trust. This might involve discussing an actual or perceived lack of security with women and then ensuring that the peace agreement will adequately reflect their needs and perspectives.

Capacity Building and Capacitating

Conflict parties and other stakeholders may need advice and assistance to strengthen their capacity for negotiation. Technical assistance may also be required to galvanize national and international support for implementation. Mediation teams may need to identify partners early in the process to help build the capacity of women's organizations and other CSOs to engage effectively in the process. Such technical assistance can help create space for women CSOs, or enable them to develop their networks, a common agenda for change and negotiation strategies.

When circumstances allow, mediators should also work with the parties to create space for women delegates. Options include:

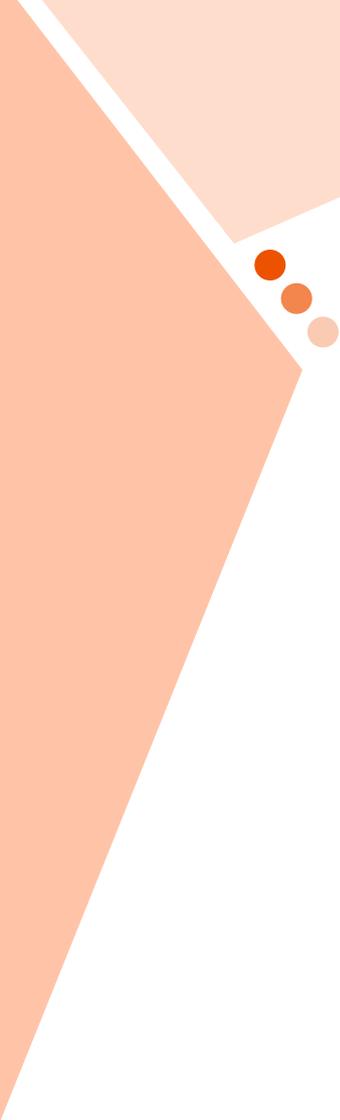
- Offering training on negotiation and substantive issues and providing international expert advice and exchanges with different conflict settings to enable them to effectively participate in peace talks (including modules to unpack international mediation approaches and UN terminology).
- Helping diverse groups of women form coalitions with broad constituencies to create common platforms of interest and agendas to present to conflict parties, mediators and observers.
- Soliciting position papers from women and other civil society groups on negotiation topics, and setting aside time on the agenda for negotiating teams to discuss these inputs.

- Facilitating regular meetings between women leaders and leaders of conflict parties, as well as with the mediator and the mediation team, to discuss issues on the agenda and to generate greater political will for women's equal participation.
- Assisting women in overcoming specific challenges, such as the need for additional funding to facilitate accompaniment; helping obtain visas; and access to information.

Guidance on Process Design

Mediators and their teams should work with conflict parties to:

- Design **inclusive mediation processes** with multiple entry points and diverse mechanisms for participation in order to integrate perspectives of conflict parties and other stakeholders, including women.
- **Identify civil society organizations**, in particular women's groups, for inclusion in Track II efforts and develop an engagement strategy at the outset of the mediation process, with actors such as representatives from trade unions, business sector, human rights groups, women's organizations, religious institutions, and indigenous groups.
- Explore all **options** for including women and civil society in a mediation process, e.g. as official members of delegations, technical experts, observers, delegates in Track II and III consultations, or facilitate access to conflict parties in the peace process.
- Facilitate women's **effective participation** by creating space and providing technical advice, as needed, for women to build their capacity and networks and to develop their own agenda for change.
- Facilitate **regular meetings** between women leaders and leaders of conflict parties to discuss issues and generate greater political will for women's equal participation.
- Identify and address **security, logistic, travel and financial constraints** that may restrict women from participating in a mediation process.
- Enable systematic consultation of and **outreach** towards women across societies to increase support.
- Plan for inclusion of women in the **implementation arrangement** of the peace agreement and consider their role when designing oversight and dispute resolution mechanisms (see section on Implementation of Peace Agreements).



Part V:
**Mediating Agreements:
A Gender Lens on
Substantive Issues**

V. Mediating Agreements: A Gender Lens on Substantive Issues

Gender-relevant Language for Ceasefires and Peace Agreements

Peace agreements aim to end violence and provide a platform for the transition to peace by addressing the causes of conflict directly, including through the establishment of new mechanisms or institutions through democratic processes. Different kinds of agreements are reached over the course of a mediation process. Some – such as ceasefires or procedural agreements on the nature of talks – are limited in scope and address a specific issue in order to contain or manage a conflict. Comprehensive peace agreements, in contrast, tackle a broad range of issues, amongst which a ceasefire agreement might be a constituent element.^{xiii}

The viability of a peace agreement is determined by the characteristics of the process and the contents of the accord. Its durability is generally based on some combination of: the degree of political commitment of the conflict parties; buy-in from the population; the extent to which it addresses the root causes of the conflict; the degree of international support it can gather and sustain; and whether it can withstand the stresses of implementation.

Operative paragraph 8 of SCR 1325 (2000) calls on all actors involved in negotiating or implementing peace agreements to adopt a gender perspective and consider:

- Addressing the special needs of women and girls during repatriation, resettlement, rehabilitation, reintegration and post-conflict reconstruction.
- Supporting local women’s peace initiatives and indigenous processes for conflict resolution and involving women in all of the implementation mechanisms of the peace agreement.

^{xiii} For the purpose of annual Women, Peace and Security data collection, the UN Department of Political Affairs includes, under the term “peace agreements”: cessation of hostilities, ceasefire, framework and overall peace agreements signed between at least two parties to a conflict, intended to end, prevent, or significantly transform a violent conflict so that it may be addressed more constructively.

- Ensuring protection of and respect for the human rights of women and girls, particularly with regard to the constitution, the electoral system, the police and the judiciary.

Gender aspects of substantive issues should be clearly articulated, as peace agreements that are gender “neutral” or “blind”^{xiv} have proven detrimental to the security and peacebuilding needs of women. Women should be identified as contributors and agents, not only as victims or persons with specific needs. Agreements should also incorporate clear gender-sensitive modalities for implementation, monitoring and dispute resolution to address disagreements that may arise during implementation, and make provisions for women’s active involvement within them.

Detailed knowledge of cultural, traditional or religious concepts, principles and institutions is essential, as they are likely relevant to an appropriately gendered approach. Agreements should draw on these constituent elements – as well as other sources such as a country’s legal framework or international standards – to advance women’s rights and gender concerns.

In many processes mediators can influence drafting processes, encouraging conflict parties to include gender-relevant language from the start. But the mediation team should also be ready to respond to the parties’ doubts or resistance. When the inclusion of gender-specific provisions in ceasefire or peace agreements proves too difficult, mediators should consider suggesting “hooks” for later, such as references in the preamble to relevant United Nations Women Peace and Security resolutions, relevant humanitarian or human rights law, CEDAW, or other frameworks relevant in the particular conflict context.

xiv Gender-blind agreements do not make any reference to the differential impact of conflict on men and women or make gender-relevant recommendations.

Guidance on Gender-relevant Language for Ceasefire and Peace Agreements

Mediators and their teams should work with conflict parties to:

- Use inclusive **terminology and pronouns** that designate neutral concepts covering both men and women (e.g.: “the people, men and women, of country X”; “s/he”) where possible and avoid terminology that is gender exclusive (e.g.: “he”).
- Anticipate how the **translation of gender terminology** into other languages may alter the meaning or result in unintended restrictions.
- Cite **gender principles** found in international and national norms and standards (including SCR 1325, CEDAW, the Beijing Platform for Action, the Universal Declaration of Human Rights, UN-issued guidance, National Constitutions and laws, National Actions Plans, etc.) in the preamble and state the commitment of parties to those obligations and to compliance at the national, regional and local levels.
- When **specifying women**, do so separately and as actors in the political, economic and social realms, rather than as (only) part of a list of “marginalized” or “victimized” groups or as “women and children” or “women and youth”; but also note their special post-conflict needs as victims where applicable.
- Where possible, include **determinative** rather than aspirational language in women-related clauses (such as “will” or “must” rather than “should”) to ensure specific action in the implementation phase.
- Include provisions for **equal rights of men and women** and inclusion of women in interim or transitional administrations, including temporary special measures for women, including quotas where appropriate.

Security Arrangements

Cessation of Hostilities and Ceasefire Agreements

Cessation of hostilities or ceasefire agreements may set the stage for a comprehensive peace process including other aspects of security arrangements. While in some contexts the conflict dynamics necessitate an exclusive interim arrangement to address a high level of violence, gender perspectives should still be reflected in a cessation of hostilities or ceasefire agreement. This can be done through:

- Gender-sensitive analysis/information gathering.
- Inclusion of gender-sensitive provisions within a code of conduct identifying permitted or proscribed actions towards military and civilian populations.
- Planning for appropriate facilities for men, women and children during the separation of forces and in cantonment sites.
- Undertaking demining/providing security sensitive to the different needs of men, women and children, for example by safeguarding agricultural paths, wells and firewood collection areas.

Conflict-related sexual violence (CRSV) should be treated as a method or tactic of warfare and addressed early and directly in any cessation of hostilities or ceasefire agreement so that persons with command responsibility understand their obligations to prevent or ensure punishment of such crimes. If left unaddressed, conflict-related sexual violence may continue outside the purview of the agreement and monitoring arrangements. Beyond the serious consequences for victims and the need to ensure accountability for such violations, CRSV risks triggering renewed violence or vengeance, and can undermine confidence in the mediation process and the peace agreement. Conflict-related sexual violence should be included as a prohibited act in the definition of principles or codes of conduct of ceasefires or peace agreements and be excluded from amnesties in line with international law. It should therefore be addressed across an agreement including in provisions on accountability and monitoring arrangements.

Monitoring, verification and reporting mechanisms are critical for the implementation of cessation of hostilities or ceasefire agreements. Women should be identified as contributors and agents, not just as victims or persons with specific needs. Their participation in monitoring and implementing bodies, including dispute resolution mechanisms, is essential, and may contribute to enhancing the sustainability of ceasefire agreements. The inclusion of women in such mechanisms facilitates access to information and the reporting of violations against women and men survivors and witnesses.

Security Arrangements

Security arrangements vary in scope and nature. They may include disarmament, demobilisation and reintegration; reform of the national security architecture, including defence or police sector reforms; and the protection of civilians or internally displaced persons, amongst other agreed issues.

When including disarmament, demobilization and reintegration provisions in peace agreements, conflict parties and mediators need to be mindful of the various roles women have played in the armed conflict (i.e. as combatants or providers of combatant support as cooks, messengers or sex slaves) in order to identify them as beneficiaries of recovery and reintegration programmes. Gender-sensitive eligibility criteria should be formulated, acknowledging the special needs of women beneficiaries, whether as members of armed groups, or as members of the communities receiving demobilized combatants. Mediators are advised to consult extensively with women on the design of security arrangements that seek to address or prevent sexual violence and to gain their support for the laying down of arms. Women are influential actors, whether as mothers, sisters, spouses or co-combatants.

Although the full range of security sector reform-related provisions may not be addressed by the mediation process, Mediators should nonetheless seek to secure with the text a clear commitment by the parties to gender-sensitive security sector reform. Commitments might include: legislation to tackle discriminatory practices and address violence against women; the recruitment of women into armed forces, including the national police; gender-sensitive selection criteria for recruitment and the vetting standards of ex-combatants

for integration into security organs; and mandatory conflict-related sexual violence training for security forces.

Recognizing that the majority of internally displaced persons in conflict or post-conflict areas are women and girls, mediators should promote inclusion of women in all safety and security arrangements relevant to displacement, such as the management of displaced persons' camps, including facilitating conflict resolution between different wards. Early warning systems, monitoring and verifications mechanisms are some of the areas in which the parties are more likely to agree on gender-sensitive frameworks.

Transitional justice measures seek to redress the legacies of massive human rights abuses, to recognize the rights of victims, promote civic trust and strengthen the rule of law. Measures such as criminal prosecutions, truth commissions and reparations programmes – where they are applicable – need to incorporate provisions to address violations perpetrated against women, including but not limited to conflict-related sexual violence, and establish that amnesties for serious crimes under international law are prohibited. Individuals credibly suspected of committing or being responsible for conflict-related sexual violence are to be excluded from participating in government and the national security system, including the armed forces, police, intelligence services and the national guard, as well as civilian oversight and control mechanisms.



Guidance on Gender Aspects of Security Arrangements, including Conflict-related Sexual Violence

Mediators and their teams should work with conflict parties to:

- Identify whether conflict-related sexual violence has been used as a method or tactic of warfare and include it as a **prohibited act** in the definition or principles of ceasefire and peace agreements, as well as in security, accountability and monitoring arrangements.
- Put in place **gender-sensitive monitoring and verification arrangements** for ceasefire agreements, including gender expertise, women monitors and translators and effective dispute resolution mechanisms; create an enabling environment for women and men to safely report conflict-related sexual violence violations; and pursue adequate and timely funding to ensure effective implementation, monitoring and verification of ceasefires and peace agreements.
- Include additional provisions for **protection for women and children** in communities facing greater security threats; insist on detailed security arrangements such as the provision of security escorts, regular patrolling and command posts (e.g. for sanitation areas, water and firewood collection points and markets).
- **Acknowledge that amnesties are prohibited** for serious crimes under international law, including conflict-related sexual violence; arrangements for transitional justice, including prosecution, reparations and truth seeking bodies need to address conflict-related sexual violence crimes among acts of violence perpetrated against women and men.
- Systematically gather **early warning information**, then investigate and report it.
- Address conflict-related sexual violence, where relevant, when **dismantling, disengaging and withdrawing armed forces** and integrating former combatants into security or state institutions.
- Mandate **security forces** to combat and monitor conflict-related sexual violence, provide training on effective military response and law enforcement, and develop a code of conduct to vet security actors, prohibit CRSV and punish misconduct.
- Ensure that **disarmament, demobilization and reintegration provisions** are gender-sensitive, acknowledge the role of women in the conflict (e.g. as combatants) and their special needs, and identify women as beneficiaries of post-conflict programmes.

Political Participation and Powersharing

Intra-state conflicts are often a violent contestation over the manner in which the territory is governed or its resources shared. Powersharing arrangements are thus the main response for ensuring that aggrieved groups are adequately represented in political decision-making. Among other things, powersharing arrangements review and establish new institutions and rules to facilitate a more inclusive architecture and the implementation of the peace agreement, in which the diversity of the society is reflected in an effort to engender civic trust. While vertical and horizontal powersharing options provide multiple opportunities and entry-points for inclusivity, particularly of women, in public life, they must also provide for effective decision-making which avoids paralysis, including through vetos and unanimity requirements.

Mediators should always assess the differential impact of powersharing mechanisms on women's participation in public life.

- Mechanisms that (typically) increase opportunities for women include:
 - Proportional representation of large electoral districts with a substantial number of electable seats tends to optimise opportunities for women.
 - Federalism and other forms of decentralisation generally provide for several levels of elected bodies, creating more opportunities for women to get elected.
 - However, women's representation in politics will only substantially increase when the electorate is sympathetic to the idea of this increase and willing to adopt temporary special measures to promote it, including quotas where relevant and appropriate.
- Mechanisms that can negatively impact women's representation include:
 - Powersharing between groups, which can limit the willingness to consider powersharing on the basis of gender.

xv "First Past The Post" is the simplest form of a plurality/majority system, using single member districts and candidate-centred voting. The winning candidate is simply the person who wins the most votes.

- Single member constituency with a first-past-the-post system.^{xv}
- Autonomy for minority groups, including the right to self-organization, which, depending on the values of the group, can potentially jeopardize women's participation.

Powersharing arrangements between conflict parties can also be a source of new conflict, making it essential to seek broader societal support from the start of the mediation. In some circumstances, national dialogues might be considered in order to probe the opinion of the population, promote mutual understanding and build broader consensus. Constitutions are generally better negotiated separately from peace agreements (see next section).

Where special remedial measures are deemed necessary, powersharing mechanisms in peace agreements can be combined with sunset clauses^{xvi} to secure the effective participation of women. Measures to ensure greater women's political representation in the structures of the key institutions (e.g. executive, legislature, parliamentary committees, judiciary and administration, army and police) include:

- Minimum requirements for women's representation in constituent assemblies and transitional governing bodies (e.g. at least 30 per cent of the participants).
- Legal quotas for reserved seats, reserved constituencies, and quotas for women candidates to elected or appointed offices in the legislature, executive, judiciary.
- Targets and affirmative action or positive discrimination for recruitment to the civil service, police, and army.
- Coordination and advocacy, such as the establishment of women's caucuses or intra-parliamentary alliances.

xvi A sunset clause is a measure within a statute, regulation or other law that provides that the law shall cease to have effect after a specific date, unless further legislative action is taken to extend the law.

Guidance on Gender Aspects of Political Participation and Powersharing

Mediators and their teams should work with conflict parties to:

- Design powersharing mechanisms with **gender-sensitivity**; in particular, consider measures that have a positive impact on women's representation.
- Include a clause calling for the meaningful representation and participation of women in **elected and appointed positions**, including at national, regional and local **levels of government**, throughout the country. This might include **minimum requirements** for women's representation in constituent assemblies and transitional governing bodies (e.g. at least 30 per cent of the participants) or **legal quotas** for reserved seats, reserved constituencies, quotas for women candidates to elected or appointed offices in the legislature, executive, judiciary.
- Specify mechanisms (e.g. criteria based selection/election processes) to ensure **qualified candidates** are chosen for such positions.
- Consider **temporary special measures and sunset clauses**, including quotas where relevant and appropriate, to ensure the inclusion and effective participation of women in key bodies and processes, such as commissions and constitutional and electoral processes.
- Make explicit that quotas are a "**minimum**" **requirement**, rather than a cap on women's representation.

Constitutions

A constitution-making process can be a central aspect of a comprehensive political transition in the aftermath of conflict. Constitution-making provides an opportunity to create a common vision of the future of a state, and can have a profound and lasting impact on peace and stability. UN engagement and assistance to constitution-making processes is in some circumstances therefore a core component of peacebuilding, and requires a coherent, multifaceted and gender-sensitive strategy.

To be successful, constitution-making should be nationally owned and led. Constitution-making processes can include broad representation and public outreach. Most countries do not adopt completely new constitutions, but instead adapt familiar procedures, perhaps drawing on a constitution that was applied before or used by a neighbouring country. The UN is committed to making every effort to support and promote inclusive, participatory and transparent constitution-making, with special attention to the equal participation of women, and to consistently promote compliance with international human rights, norms and standards.

A common challenge is to avoid pressure to complete the constitution-making process too quickly. Divided societies with deep disagreement on fundamental issues will almost always require time to reach consensus. There are usually rational and understandable reasons to expedite the process to return control to civilian authorities or hold constitutionally based elections as soon as possible. However, short timeframes often result in limited public involvement, and penalise women especially. Inclusive constitution-making can be boosted through early civic education workshops and the distribution of educational materials to broaden participation, with such an effort ideally supported by a comprehensive media strategy. Special attention is required to include women of diverse age groups and from minority populations in public consultation processes. The outcome of these consultations with women groups needs to be carefully analysed and systematically fed into the process.

Recurrent issues with regard to gender and constitution-making include:

- Discrimination (i.e. prohibition and elimination of).
- Equality (i.e. realisation in law and in fact).

- Participation (equal and effective).
- Protection (both in the public and private sphere, including conflict-related sexual violence).
- Special needs (notably health, education and work).
- Special roles and responsibilities (notably child and family care).

Decision-making in constitution-making processes is frequently exclusive and dominated by elites, predominantly men, even in highly participatory processes such as constituent assemblies and national dialogues. Hence, mediators need to promote effective women's representation in bodies that govern these transition processes. Options include:

- Providing for positive temporary special measures and dedicated resources to support the participation of women.
- Introducing special leadership/chairing arrangements, speaking/procedural rules and decision-making mechanisms, for example for constituent assemblies and national dialogue processes.
- Creating specialized, independent bodies such as Human Rights Commissions and Commissions on the Status of Women and Girls, with consultative, administrative and even judicial powers.

Guidance on Gender Aspects of Constitutions

Mediators and their teams should work with conflict parties to:

- Promote effective **women's representation in constitution making and other bodies** that govern transition processes, by adopting positive temporary special measures and allocating dedicated resources; or making special leadership/ chairing arrangements, speaking/procedural rules and decision-making mechanisms, for example for constituent assemblies and national dialogue processes.
- Encourage the perception of constitutions as a framework for an inclusive society in which all people, women and men, are included in the **language and institutions of the constitution**, which should avoid gender prejudicial language like 'he/his'.
- Include a clause with explicit reference to women prohibiting discrimination on the basis of sex, sexual preference, marital status, and pregnancy, and require **special measures** to ensure equality for women in law and in fact, including for women belonging to minorities or indigenous peoples.
- Ensure that the constitution does not permit **civil and customary law** to discriminate against women and girls in any way (particularly in the areas of citizenship, nationality, personal status, family, education, labour, property and inheritance).
- Secure women's representation in public life, notably in **elected and appointed positions**, including the executive, legislature and judiciary, public administration, and security services (e.g. through quotas).
- Secure **protection from all forms of violence** against women and men, boys and girls.
- Protect **social and economic rights** and spell out aspects of these rights that affect women in special ways such as health, pregnancy and maternity.
- Create opportunities for women and men to **engage in public life** (e.g. protect the right to associate, assemble and free speech; secure access to information and require public bodies to act in a transparent way; etc.).
- Require the state to **establish institutions and processes for advancing and monitoring respect for women's rights**, such as establishing a separate government agency or specialized bodies (e.g. Commission on the Status of Women and Girls) or assign existing government departments and public services with special responsibility for women and girls.

Implementation of Peace Agreements

Ceasefire and peace agreements can fail in the implementation phase for different reasons:

- Limited commitment of parties and their constituencies to implement the agreement.
- The fragility of agreements that were negotiated in exclusive processes and lack national ownership, or contain vague language that did not lay out clear responsibilities for the parties involved.
- A breakdown of transitional security arrangements as a result of weak monitoring and verification mechanisms, or the absence of dispute resolution mechanisms.
- Partial implementation of the agreement due to lack of funding or unfulfilled donor commitments; a lack of consultation between mediation teams and implementing entities, as well as among implementing agencies.

Inclusive mediation processes that build relationships between conflict parties and other stakeholders in the course of the mediation help forge joint ownership of the agreement. Time may be an important element in this process, and mediators may need to resist pressure from donors and other international actors to find quick solutions to end the conflict.

Active engagement of women civil society organizations during both the mediation and implementation is likely to increase the legitimacy and sustainability of an agreement. Efforts should be made to promote women's representation in decision-making positions, such as signatories to peace agreements and as chairs or active members of transition or implementation bodies, for which quotas or other special measures for the effective inclusion of women may be required. Conflict parties and mediators could also consider establishing national thematic working groups for the implementation of agreements – including a “1325” group to monitor and ensure gender sensitivity – whilst also assigning women to all other thematic groups. Other possible initiatives include hosting regular meetings for women's organizations with international missions, diplomatic teams and envoys

during implementation and inviting women representatives to speak at and participate in international preparatory, strategy or donor meetings.^{xvii}

Peace agreements often contain provisions pertaining to implementation support by third parties (such as donors, development agencies, electoral advisory groups and peacekeeping forces), sometimes without much consultation between the mediation teams and the implementing entities. Well before the negotiations are concluded, conflict parties and mediators are advised to draw upon the skills of implementation experts with the necessary tools and expertise. Mediators should also ensure that there is sufficient gender expertise in the implementation teams, as gender-sensitive analysis is often lacking in the design of immediate post-conflict security and economic recovery programmes.

Where appropriate, mediators should also seek support for the implementation phase from International contact groups or “friends of mediation” forums, commonly comprising Member States and relevant international and regional actors. Such groupings can provide helpful political and material support for an effective transition process (i.e. by contributing funds, expertise, and coordinated action). A special focus on monitoring the realisation of gender-relevant provisions in the peace agreements is warranted, most notably the political participation of women. Mediators should encourage donors to adhere to the UN commitment to dedicate 15 per cent of all post-conflict peacebuilding funds to projects addressing the specific needs and empowerment of women. Contact groups can provide dedicated funding to support civil society in conflict and post conflict situations.^{xviii} International actors can also be encouraged to support documentation of good practice including analysis of efforts, challenges and successes of gender inclusive mediation approaches, thereby helping to contribute to reliable data on women’s actual participation in peace processes and the implementation of agreements.

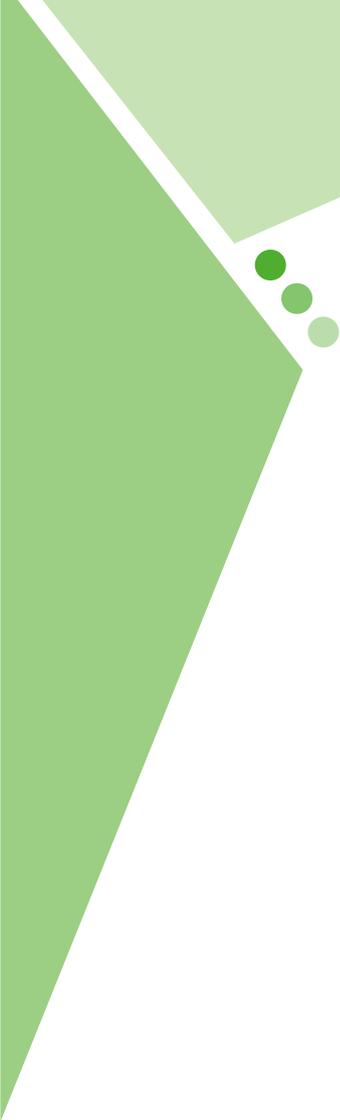
xvii See the International Civil Society Action Network “Better Peace Tool” (2015) for more recommendations at www.betterpeacetool.org

xviii As called for in UN Security Council Resolutions on Women Peace and Security SCR 2122 (2013) OP7b and SCR 2242 (2015) OP3.

Guidance on Gender Aspects of Implementation Arrangements

Mediators and their teams should work with the conflict parties to:

- Promote **women's representation in decision-making positions**, such as signatories to peace agreements and chairs and members of transition or implementation bodies, for which quotas or other temporary special measures may be required.
- Involve **women as planners, implementers and beneficiaries**, to support a sustainable transition process; and make sure that women have access to post-conflict programmes and technical assistance.
- Invite women civil society representatives to speak and participate in international preparatory, strategy, or donors' meetings/summits and advocate for **dedicated funding to support women's civil society** initiatives in conflict and post conflict situations.
- Continue or establish international contact groups during the transition phase to provide **political and material support for effective implementation**, with a special focus on the realisation of gender-relevant provisions, most notably the political participation of women.



Part VI: **Conclusion**

VI. Conclusion

This UN Department of Political Affairs' Guidance responds to the need to realize aspirations and commitments made by the international community, and reinforced at the regional and national level, with regard to the effective participation of women in mediation and peace processes as well as the introduction of a more gender-sensitive approach to the substance and implementation of peace agreements. It recognizes that mediation is a complex endeavour, whose outcome is determined by many different factors. It also acknowledges that the role, reach, and influence of the mediator – who engages only on the basis of the consent of the conflict parties – will vary greatly. The Guidance nonetheless rests on the premise that mediation strategies that include women systematically, and prioritize attention to gender inclusive provisions in the agreements that are eventually reached lay the foundation for a more durable peace. Far from being prescriptive, the Guidance contains a number of practical suggestions for consideration by mediators and their teams, as well as conflict parties. Not all of them will be possible to implement in every situation, but if more of them are implemented more frequently, the building of sustainable and inclusive peace, and the achievement of the normative goals for Women, Peace and Security that were first set out by the Security Council in Resolution 1325 (2000) will be increasingly realized.





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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 achieved¹. 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.

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 literature². 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 2000³, 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.

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

⁵ See George Modelski "International Settlement 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.

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 in toto 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 contains⁷. 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 institutions⁸. 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 is to relieve outside pressure on the two parties to defect from implementation. But it 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 and 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:

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 adequate¹⁰.
- (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 found¹¹. 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

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 leverage¹². What are these sources? And in what situations can the verifier rely on them?

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 party¹³. 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

¹³ One example is the entry into Namibia of armed SWAPO fighters on 1 April 1989, which was denounced by SRSR 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 track¹⁶. 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

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

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

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 fourth consideration 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.

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 intervention²¹. 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 resettlement²² 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 exist²³.

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 fifth consideration 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 partners²⁵. 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

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.²⁶ 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 tasks²⁷: (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

²⁶ In *Aiding Democracy Abroad*, Thomas Carothers illustrates the “congestion on the ground” produced by the “explosion of rule-of-law assistance all over the world”: “Guatemala is a vivid example. As the country's leaders have struggled to implement the ambitious 1996 peace accords, donors have gravitated toward rule-of-law strengthening as the solution to the challenges of deepening democracy, furthering human rights, advancing market reforms, reducing corruption, and fighting crime. Rule-of-law aid programs are multiplying: the U.S. government, the Inter-American Development Bank, the Swedish Government, the UN Development Programme, the Spanish government, and the Dutch government are all sponsoring rule-of-law aid activities in the country. The various donors have commissioned more than thirty separate diagnostic studies of Guatemala's legal and judicial system in recent years. The rather small set of Guatemalan institutions responsible for the rule of law are overrun with aid programs.” In *Aiding Democracy Abroad The Learning Curve*, Carnegie Endowment for International Peace, 1999, p. 165.

²⁷ 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.

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 hampered by considerations of national interest²⁸). 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 its 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.²⁹ 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

²⁸ 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.

²⁹ See also Doyle, Johnston and Orr, op cit page 388

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 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 implementation support system different from the international negotiation 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.³⁰

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.³¹

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

³⁰ 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).

³¹ 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).

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 attempt to reconcile the two imperatives³² (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'être* - 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.

³² “Principles to be followed in combating impunity”, UN Commission on Human Rights, Rapporteur Louis Joinet, 1995. **CHECK**

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 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 can do to bear on the achievement of what it cannot is the art of UN peacemaking and, through a judicious combination of mediation, substitution and verification, much innovation in this field is possible.³³

³³ 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.

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 timelines"³⁴. 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."³⁵

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, it is prudent to assume that there is no settlement yet. 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.

³⁴ Report of the Panel on United Nations Peace Operations, doc. A/55/305-S/2000/809, Annex III, page 54

³⁵ Op Cit, paragraph 58, page 10

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.³⁶

- 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 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.

³⁶ Such period is generally required anyway, in order to allow for the deployment of a UN mission.

- 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.

Women and peace processes, negotiations, and agreements: operational opportunities and challenges

By Christine Bell

■ Executive summary

This policy brief addresses the involvement of women in peace processes, negotiations, and agreements and outlines the shape of contemporary peace processes and their resultant agreements, arguing that they exclude women. It stresses the importance of peace processes and agreements to women, because these processes not only aim to institute a ceasefire and end the conflict, but often also define the new structures and constitution of the country, including its political and legal institutions. A peace process raises new opportunities for women to have their concerns and experience of conflict heard and to play a part in their country's reform. If successful, they can influence the entire political and legal framework of the country. For this reason, international legal standards, in particular UN Security Council Resolution 1325 of 2000, provide that women should be involved in peace negotiations and that peace agreements should incorporate a gender perspective.

However, challenges face the translation of these commitments and opportunities into practice. Recommendations for overcoming these challenges revolve around two central points: that women should be included at all levels in negotiations to formulate and implement peace agreements, and that the provisions of peace agreements should be designed with the particular status and situation of women in mind and, where appropriate, include special provisions for women.

Peace processes, negotiations and agreements: the background

Since around 1990 peace processes involving the negotiation of formal peace agreements between the protagonists to conflict have become a predominant way of ending conflict. Since that time over 700 documents that can be seen as peace agreements have been negotiated in nearly 100 jurisdictions (see Bell, 2008: Appendix; UN Peacemaker, 2012). The conflicts in which they are negotiated are primarily intrastate, i.e. conflicts arising mainly within the borders of states and taking place between the states and their armed non-state opponents. Such conflicts often have regional and international dimensions. Some interstate conflicts, such as those in Bosnia, Kosovo, Afghanistan and

Iraq, have also been connected to intrastate conflict and left behind a need for an internal peace process, adding to the peace agreement phenomenon.

What are peace processes and agreements?

There is no formal definition of a peace process or peace agreement. The following definitions aim to provide clarity on how the terms are normally used:

- **A peace process** is an attempt to bring political and/or military elites involved in a conflict to some sort of mutual agreement as to how to end the conflict.
- **Peace agreements** are documents produced after discussion with some or all of a conflict's protagonists with a view to ending violent military conflict.

These are both broad definitions that cover a wide range of processes and agreements produced at different stages of the process.¹ It is useful to consider processes as loosely developing in three stages, although these are rarely distinct in practice: the pre-negotiation stage, the framework/substantive stage and the implementation/renegotiation stage (see Bell, 2008: 20-32). This policy brief will examine the opportunities and challenges for women at each stage of a peace process.

The exclusion of women

Peace processes as conceptually gendered

The definitions outlined above capture what are commonly understood to be peace processes and peace agreements. However, they already indicate a gender bias. Despite the fact that peace initiatives will often have been promoted by civil society and in particular women during a conflict, it is often only at the stage where the main protagonists to a conflict – primarily men – come together in a formal attempt to mediate an end to the conflict that a formal peace process is considered to exist and attracts sustained international support. Clearly, the agreement of those at the heart of waging the conflict is essential to achieving peace in practice. However, civic peace initiatives that have preceded it will often be a valuable resource and constitute an ongoing pressure on the political process.

The formal peace process contains other structural biases in terms of women's participation. If peace is to be achieved in practice the parties to the conflict must compromise on their preferred solutions to the conflict. Often international mediators too must compromise on what they see as the just and fair solution to the conflict. Therefore, justice concerns – including gender justice – are often seen as requiring to be shaped to, or even attenuated by, an over-riding need to stop conflict-related violence (see Anonymous, 2006). Famously, this has given rise to a "justice/peace" debate over whether and under what conditions the obligation to prosecute those responsible for atrocities in the conflict might be tempered by forms of amnesty, in order to achieve peace. However, there are also gender-specific concerns as to how compromises are achieved.

Access. An initial problem for women is how to access processes designed around the participation of politico-military elites who are most often men. Processes to achieve peace between politico-military elites are often fragile. Therefore negotiations tend to begin in secret or take place in non-public forums where parties can sound out each other's positions and explore the possibility of moving away from violence. In cases of extreme conflict and internationalised processes the talks typically take place outside the country concerned. As a result, peace talks can be very difficult for women to access, whether to attend or to influence through interchange with those taking part in the talks. While international mediators may

commit to the inclusion of women, where they perceive the process to be fragile they may be reluctant to open up the process to participants other than those at the heart of the conflict, both because this may upset the parties viewed as crucial to a ceasefire and because the more groups and interests present at a negotiation, the more difficult it can be to reach agreement.

Issues. Secondly, the peace process aims to end what is understood to be the political violence of the conflict. Women will often have experienced forms of violence pre-conflict and different gendered forms of violence during the conflict, and will experience new forms of violence post-conflict. In focusing on political violence, the peace process can fail to understand women's experience of violence and the complex ways in which pre-conflict violence, violence during the conflict and post-conflict violence affect women in a continuous way (see Ní Aoláin et al., 2011). If peace processes and their agreements do not take on board women's concerns, they can both leave key sites of violence in place and create new ones.

The absence of women

The conceptual gendering of peace processes is both reflected in and reinforced by the relative absence of women from these processes. This absence in turn is translated into peace agreement provisions that largely leave women out and do not address their concerns. Research indicates that a very low proportion of negotiators are women, i.e. negotiating teams drawn from politico-military elites are primarily men:

- A study in 2008 of 33 peace negotiations found that only 4-11% out of 280 negotiators were women and that the average participation of women on government negotiating delegations was, at 7%, higher than on the delegations of non-state armed groups (Fisas, 2008: 20-22).

Box 1: Example: Burundi

The peace process in Burundi saw a range of initiatives aimed at the inclusion of women, including UNIFEM convening the All Party Women's Peace Conference with two representatives from each of the warring factions and the seven women observers to the process, and an "equality-friendly" mediator in the form of Nelson Mandela. The resultant Arusha Peace and Reconciliation Agreement for Burundi of August 29th 2008 was signed "in the presence of the representatives of Burundian civil society and women's organizations and Burundian religious leaders" (Arusha Agreement, 2008). More than half the recommendations formulated by the All Party Women's Peace Conference were adopted, including measures on sexual violence and provisions for participation. In the 2005 constitution (art. 34) a quota of 30% women was laid down for the (power-sharing) National Assembly.

¹ For further discussion of the difficulties of definitions, see Bell (2008: 46-76).

- Another study in 2012 indicates that out of a representative sample of 31 major peace processes between 1992 and 2011, only 4% of signatories, 2.4% of chief mediators, 3.7% of witnesses and 9% of negotiators were women (UNIFEM, 2012).
- The UN has never appointed a woman to be the chief mediator of a peace process (UNIFEM, 2012).
- A review in 2010 indicated that only 16% of peace agreements mention women. This has risen from around 11% pre-2000 and the passing of UN Security Council Resolution (UNSCR) 1325 to 27% since then. Not all of these references were favourable to women (Bell & O'Rourke, 2010).
- An updating review in 2012 indicated that only 17 out of the 61 accords signed between August 2008 and April 2012 included gender-related keywords (UNIFEM, 2012).
- References to women and gender in peace agreements are often once-off mentions, worded in very general terms (e.g. broad references to equality on the basis of sex) and are often included in the preamble or annexes of agreements rather than in their main text. They fall far short of a holistic "gender perspective" (UNIFEM, 2012; Bell & O'Rourke, 2010).
- Where there is a "gender-friendly" mediator and support for women's participation, it is reflected in better provision for women, as the example of Burundi (see Box 1) illustrates.

The international legal framework

There is a clear international legal framework underwriting peace negotiations. The first is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which provides a broad set of provisions to support women's public participation and equality. Of particular relevance are Articles 2 and 6 (equality for women in political and legal institutions), 4 (temporary special measures to ensure women's participation), 5 (to ensure the modification of customary and cultural practices that impact negatively on women), 6 (the suppression of sexual trafficking and the exploitation of women), 8 (to support women to represent governments), 9 (women and citizenship), 12 (women and health equality), and 15 (equality before the law).²

Most notably, however, UNSCR 1325 and its successors include specific provision for peace negotiations and agreements. Paragraph 8:

- Calls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia:*
- (a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction;
 - (b) Measures that support local women's peace initia-

tives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements;

(c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary

Opportunities and challenges for women

Despite these provisions, particular challenges and opportunities for women operate at each stage of a peace process.

Pre-negotiation processes/agreements and women

The **pre-negotiation** stage of a peace process typically revolves around how to get the parties into talks, and in particular who is going to negotiate and with what status. Often pre-negotiation agreements are not inclusive of all the parties to the conflict, but involve bilateral agreements between some of the players. For face-to-face or proximity negotiations to take place, each party must be assured that its attempts to engage in dialogue will not be used by the other side to gain military advantage. In order to get everyone to the negotiating table, agreement needs to be reached on matters such as the return of negotiators from exile or their release from prison; safeguards as to their future physical integrity and freedom from imprisonment; and limits on how the war is to be dealt with while negotiations take place, such as through a form of ceasefire – usually temporary and conditional. Pre-negotiation agreements can include mechanisms such as amnesties for negotiators; temporary ceasefire agreements; human rights protections; and the monitoring of violations both of ceasefires and human rights. Pre-negotiation agreements often also typically begin to set the agenda for talks as the parties begin to bargain and sound out each other's positions on substantive issues. Often this takes the form of attempts to impose preconditions on the negotiating agenda. Where international mediation takes place while conflict is ongoing, the pre-negotiation process often involves international attempts to provide blueprints, structure ceasefires and gain the parties' consent.

Opportunities. The start of a formal peace process often holds opportunities for women to be involved. A ceasefire can create a space for mobilisation and women's activism. Women have a strong interest in some sort of ceasefire being achieved: without it, physical integrity, socio-economic goods and justice will not be delivered. If women can influence pre-negotiation agreements they can begin to shape the agenda for substantive talks and future governance structures.

Challenges. However, challenges in accessing peace processes remain. Women tend to have a very limited

² The Committee on the Elimination of All Forms of Discrimination Against Women is currently trying to frame a general recommendation on women in conflict and post-conflict societies that addresses how these articles might be enforced in a conflict and post-conflict environment; see <<http://www2.ohchr.org/english/bodies/cedaw/discussion2011.htm>>. For detailed recommendations relating to this, see Christine Bell and Catherine O'Rourke's submission at <http://www2.ohchr.org/english/bodies/cedaw/docs/Discussion2011/ChristineBell_CatherineORourke.pdf>.

participation in pre-negotiation talks processes due to the secrecy that characterises them. Pre-negotiation talks often culminate in some form of ceasefire and, in cases of international involvement, forms of peacekeeping and international ceasefire monitoring and forms of demobilisation, including temporary or partial amnesties. As these are “military” matters they perhaps do not appear to mediators to be self-evidently important to women.

Yet, for women, it is vital that these mechanisms address violence against women, and women members of armed forces specifically. If ceasefire provisions do not specify, for example, that sexual violence constitutes a ceasefire violation, such violations will not be prohibited and monitored as such. Research has indicated that even where women are present at talks, issues of ongoing sexual or gender-based violence can be difficult for local women to raise, which means that if a provision prohibiting sexual violence is to emerge it must often be suggested and pushed for by the mediator (Jenkins & Goetz, 2010).

Similarly, processes of demobilisation also present women with particular difficulties. Women members of state and non-state forces may be left vulnerable by their reduction in status and the modalities of demobilisation unless attention is paid to this possibility. The separating and quartering of forces in particular areas and the introduction of (mostly male) peacekeepers may also create new problems of violence and trafficking unless they are anticipated and addressed.

Finally, pre-negotiation talks begin to set and circumscribe the agenda for substantive peace agreement issues. While these processes focus on how to get the parties into substantive talks, parties often have to be reassured as to what they will get in talks. Therefore, pre-negotiation agreements will often begin to set out a blueprint or roadmap for both the talks and an ultimate settlement. The exclusion of women cuts them out of processes that are essentially processes of constitution-making that both chart a road out of conflict and put in place the political, legal and economic structures of government; provide for the blueprint of post-conflict reconstruction; circumscribe the role of international organisations; and set in place funding streams. In East Timor, for example, while women were included in the formal negotiation process for the constitution, it has been suggested that the final constitution was based on a 1998 draft document that had been prepared by Fretilin, the dominant political party in the country (see Haynes et al., 2011).

However, it can be difficult to access the formal process, but Box 2 indicates some tactics women have used to access peace processes.

Box 2: Tactics to access peace processes and influence agreements

Sometimes women have organised outside of the process to try to influence and penetrate it. For example, women in Colombia and Liberia organised outside formal processes to try to set their own agenda and influence the talks. A gender adviser has been appointed to some talks processes; e.g. as part of its UNSCR 1325 commitments, Britain supported a gender adviser to the Uganda-Lord’s Resistance Army talks. In Northern Ireland women formed the Women’s Coalition and used a mechanism designed to ensure the participation of small loyalist political groupings to gain access to the talks’ process. In all these processes women’s participation influenced the shape of the final agreement, both in terms of specific women’s issues and more broadly. The peace processes in Sri Lanka had a Women’s Committee made up of women from both sides in the conflict and it also had an (international) human rights adviser. These talks broke down before the process was completed.

Framework/substantive agreements

The second type of peace agreement can be termed framework or substantive agreements. These agreements tend to be inclusive of all the main groups involved in waging the war by military means. Framework/substantive agreements set out a framework agreement or roadmap for resolving the substantive issues of the dispute. The agreement usually reaffirms a commitment to non-violent means for resolving the conflict; acknowledges the status of the parties in the negotiations; begins to address some of the consequences of the conflict (such as prisoners, emergency legislation and ongoing human rights violations); provides for interim arrangements as to how power is to be held and exercised; and sets an agenda, and possibly a timetable, for reaching a more permanent resolution of substantive issues such as self-determination, democratisation, the armed forces/policing, human rights protection and reconstruction.

Opportunities. These processes and agreements tend to provide a constitutional power map for the future of the country, sometimes in the form of actual constitutions and sometimes in constitution-like provisions in the peace agreement itself. These agreements fundamentally restructure political and legal institutions. If women can influence these negotiations they can influence the structures that can enable or prevent their participation in public life for the indefinite future.

Challenges. However, in particular the following challenges remain.

Power sharing. Peace agreements often tend to provide for political, territorial and military forms of power sharing. These forms of power sharing form a compromise between the different contenders to power. Power sharing is a broad term, with arrangements being very varied and different

types of power-sharing arrangements often being overlaid on each other in complex power-sharing models. Traditionally, critics of power sharing have argued that it can be illiberal in giving groups power in ways that can trammel the rights of individuals, e.g. to have their vote weighted equally (e.g. see ECHR, 2009). They have also argued that power-sharing arrangements can reify and entrench the very group identities at the heart of the conflict that the society in question needs to transcend.³ Women might be thought to be particularly concerned about these criticisms. However, they also have national and ethnic identities, and liberal majoritarian constitutional structures and electoral systems have also been problematic with regard to the participation of women. Therefore the critical choice for women may not be between power-sharing and majoritarian systems, but between systems that include “special temporary measures” such as reserve seats and quotas for the inclusion of women in political institutions and systems that do not at present do so. Power-sharing arrangements remain popular because they constitute a form of “principled realism” capable of getting warring parties to consent to new political structures in place of violence. Women have an interest in an end to violence. However, they also have an interest in the design of new political institutions taking into account the need for the effective participation of women. Little has been written or researched as to how best to advocate for and what to advocate as regards how women’s interests can be protected in power-sharing arrangements.⁴

The following matters are critical and any power-sharing mediation should attempt to address them:

- Firstly, **political power sharing** such as consociationalism can provide for quotas for women without disrupting the central power-sharing mechanism. For example, power sharing between Hutus and Tutsis in Burundi also included a provision for 30% of the seats in the legislature to be held by women. Similarly, a peace agreement in Somalia provided that the Transitional National Assembly have at least 12% women representatives. In total, six other peace processes have provided for reserved seats or quotas for women in legislative or executive bodies (Bangladesh/Chittagong Hills Tract, Nepal, Papua New Guinea/Bougainville, Philippines/Mindanao, India/Bodoland, and Djibouti). Where power sharing among ethnic, religious or political groups is provided for, consideration should also be given to the effective participation of women and the use of quotas to ensure their involvement. It can be difficult to anticipate how different voting formulas proposed in talks will affect women or can work alongside temporary special measures for women such as quotas. High-level technical advice is necessary in this regard.
- **Territorial power-sharing** arrangements that involve the devolution of power to territorially based national groupings should ensure that there are both legal provisions and implementation mechanisms that are sufficient to protect the rights of women. In particular, provisions for territorial or cultural autonomy can prioritise local laws and customary practices, which, while seen as a positive alternative to state laws and practices in terms of a minority group, might themselves be negative and discriminatory for women. Where power is devolved to national groupings, either along territorial or conceptual lines, the effective protection of the rights of women should be guaranteed. In South Africa, for example, the constitution provides that rights such as equality are to take precedence over customary law and practices.
- **Military power-sharing** structures can often be assisted by the inclusion of women, and, as a matter of equality, if provision is made to have shared military institutions, consideration should be given to the inclusion of women as part of the broader project of inclusion. In Northern Ireland, for example, while the predominance of the Protestant/Unionist community in the police force was a key driver of reform aimed at the inclusion of Catholics/Nationalists, the issue of equality for women was pressed and viewed as also important. Ultimately – and ironically, perhaps – equality laws operating at the European level prohibited strong quotas for women, while an opt out was able to be achieved as regards similar equality provisions in the areas of race and religion, so as to enable 50/50 recruiting policies for Catholics and Protestants.
- Similarly, the **reform of a range of legal institutions** – criminal justice, the judiciary and the legal profession – while occurring under the impetus of the conflict dynamics, also provide opportunities to further equality for women. While attention is often given to how the main ethnic, religious or political groups in the country are represented in these institutions, institutional reform also provides an opportunity for the inclusion of women.
- Peace agreements often also provide a new **human rights framework**, either in the form of specific new rights or by incorporating international conventions. When rights frameworks are considered, the question of how to specifically protect women’s rights in the new dispensation should be given particular consideration. When international treaties are incorporated in the new structures, CEDAW provisions should be included. Also, specifically mentioning UNSCR 1325 can provide women with an ongoing domestic legal basis for equal treatment and the honouring of its provisions.
- Peace agreements often also provide some mechanism for **dealing with the past**. This can include provisions for international criminal justice or domestic-based truth commissions. Here too gender implications are present in terms of how to deal with the gender-specific needs of women and gender-specific crimes, whether to include socioeconomic violations as well as civil and political

³ For a summary of these criticisms and a powerful response to them, see O’Leary (2005).

⁴ Byrne and McCulloch (2013) give preliminary consideration to this issue.

ones (a decision with gender implications), and how to make reparations mechanisms women friendly.

Implementation/renegotiation agreements

The third category of peace agreements is implementation agreements. These begin to take forward and develop aspects of the framework, fleshing out its detail. By their nature, implementation agreements involve new negotiations and in practice often see a measure of renegotiation as parties test whether they can claw back concessions made at an earlier stage. Implementation agreements may include all the parties to the framework agreement. However, sometimes they involve essentially bilateral negotiations with particular intransigent or even splinter groups who are not complying with the agreement. Sometimes implementation agreements are not documented and agreement takes other forms, such as agreed legislation. If successful, these talks will lead to a formal end to the conflict.

Opportunities. Implementation agreements can take place in a more normalised, open environment with an established ceasefire. This environment can be conducive to broad public consultation. For example, the peace process in Northern Ireland involved post-agreement broad consultations on policing, criminal justice, a bill of rights and dealing with the past. Agreements such as those in Burundi sketched out a large number of development processes to be taken forward by the society in general. Even in processes where women have been excluded, there may be post-agreement opportunities for influence and change.

Challenges. Again, challenges remain. First and foremost is the general challenge that peace agreements are very difficult to implement and seldom move a country away from conflict in a completely non-violent and linear way. Women and other civil society actors who have taken political positions during the peace process may find themselves the targets of renewed threats of violence – and may be even more targeted than before. If the agreement collapses, any gains women have made in the agreement's text collapse. Secondly, sometimes implementation talks focus around bringing in intransigent parties. These talks' processes can sometimes become more exclusive rather than more inclusive, even when the initial talks process was relatively inclusive. A final implementation challenge is that women will be faced with multiple reform processes, social and economic reconstruction, and a range of issues in the home, e.g. dealing with returning partners and sons or relocating as displaced persons. It can be difficult to have enough energy to respond coherently to all these challenges at once. Often external funding sources will view the conflict as being "over" and funding will be depleted just when the new structures need support to become firmly established in their roles.

Recommendations: translating theory into action

To address the above opportunities and challenges for women, two sets of recommendations can be made: firstly, those relating to the processes of negotiating, reaching and implementing peace agreements; and, secondly, those relating to the substance of what is included in peace agreements.⁵

Process issues

Women need to be included at all levels in negotiations. Mechanisms for the effective participation of women need to be creatively designed to take into account the context of women's access in the particular country concerned.

In particular, the following should occur:

- Gender experts should be placed in strategic positions within the formal peace talks, including at the technical level of the mediator's office, and the facilitator and negotiation parties' delegations; or should establish a system by which they can stay informed about the process and feed back women's recommendations to all actors.
- Sectoral meetings with women and civil society actors should also be organised to ensure a broader base of participation in peace discussions.
- Countries and international organisations who play a mediation role should have a standardised protocol or action plan that ensures the engagement of women's civil society groups in formal peace negotiations.
- These protocols/action plans should address two dimensions: the need to enable and facilitate women's groups to frame their concerns and demands; and mechanisms allowing these groups access to the formal negotiating process.
- When performing a support role to a peace process, the UN, groups of friends of member states, or other mediation actors should allocate specific funding aimed at increasing women's participation in parties' delegations and provide incentives for the greater representation of women in negotiating teams.
- Support organisations should ensure that the dynamics of talks enable women participants to raise their concerns, while technical assistance (e.g. around electoral reform) should be provided to help design mechanisms for the peace agreement.
- Women and gender experts should be involved in technical work around every component of peace deals, including ceasefire-monitoring agreements; security sector reform and disarmament, demobilisation and reintegration (DDR); provisions covering justice and reparations; socioeconomic recovery and wealth-sharing agreements; and post-accord governance reform. These mechanisms should ensure both gender balance and gender expertise.
- Both male and female mediators should receive gender-awareness training and briefing packages with ready

5 These recommendations draw on and extend other sources, e.g. UNIFEM (2012) and Bell and O'Rourke (2010).

examples of gender-responsible language, best practice, ways of engaging with women’s civil society and a context-specific analysis of women’s situations.

- Where possible, peace agreements and constitutions should guarantee non-governmental organisations the freedom to operate, including women’s organisations, and provide mechanisms for them to be consulted about relevant public policy.
- Research should be developed dealing with women and constitution making and women and power sharing to support best practice.
- State parties should ensure that national action plans to implement UNSCR 1325 and subsequent resolutions are compliant with CEDAW and aim at achieving the equality of women as contemplated by CEDAW.
- In their periodic reports to CEDAW, state parties should detail their activities to implement UNSCR 1325 in their domestic and foreign policies.

Substantive recommendations

In addition, the following recommendations regarding the substance of what is agreed should be considered. Despite their exhortatory language, these recommendations should not be approached as a blueprint for a “women-friendly” peace agreement, as any peace process will involve multiple trade-offs among parties, interests and issues. Any peace agreement must respond to local contexts to be effectively implemented. However, the following issues should be considered in peace negotiations rather than left out due to lack of consideration. They can be summarised in one recommendation:

The provisions of peace agreements should be designed with the particular status and situation of women in mind and, where appropriate, special provision for women should be made.

More particularly, the following issues should be covered:

Violence against women

- Violence against women should be understood as both a direct and indirect dynamic of the conflict that needs to be specifically addressed. The process should be designed to ensure that the gender dynamics of violence are heard, understood and addressed at all stages of the process.
- Ceasefire agreements should define sexual and gender-based violence as a ceasefire violation.
- Care should be taken around DDR processes and the use of international peacekeeping forces that public violence is not translated into private violence against women.

Peacekeeping

States contributing forces to international peacekeeping operations should ensure that:

- the peacekeeping mandate has adequate sanctions for sexual exploitation of and violence against women; and
- clear disciplinary processes are in place with regard to sexual exploitation.

Constitutional reform

- Governments, parties and mediators should recognise that framework peace agreements operate as broad political constitutional documents, whether they contain legal constitutions or not, and states should ensure that peace agreements include a commitment to the principle of the equality of men and women within their text.
- Where a human rights framework is included – and even where it is not – the peace agreement should acknowledge the state’s commitment to CEDAW and its optional protocol, and commit to ensuring that future legislative and constitutional processes contemplated in the peace agreement are compliant with CEDAW.
- Where the peace agreement includes a legal constitution or sets out a constitutional reform process, all the necessary steps should be taken to ensure that the effective participation of women is provided for in the design of the process and enshrined in any legal constitution that results.
- Where an institutional framework for implementing peace agreement commitments is provided, this framework should include a clearly resourced mechanism to ensure that the equality provisions of the peace agreement are implemented.
- Peace agreements and post-conflict reconstruction processes should ensure that constitutional reform that gives place to traditional laws or local justice practices is compliant with CEDAW equality provisions and ensures that traditional or local practices are not discriminatory against women and are to be implemented within a wider framework for equality.

Political participation: power sharing

Where peace agreements provide for power-sharing arrangements on grounds of political affiliation or ethnicity, they should also include measures to ensure the representation of women, including gender quotas.

New democratic institutions established by peace agreements should include gender quotas to ensure the presence of women at the local, regional and national levels of government. In particular, states should ensure the following:

- New electoral systems aimed at proportional representation should consider how the representation of women can be improved through the use of quotas or other special measures.
- Arrangements for power sharing in the executive through the proportional representation of different ethnic or political groups should include specific provisions ensuring the representation of women within ethnic or political group representation that is additional to ethnic or political representation.
- Quotas designed to give effective participation to minority or indigenous groups should be designed so as not to discriminate against women members of these groups.

Institutional reform

- Reform of the state's legislation and national tribunals, courts and public institutions should include specific measures to protect women against any act of discrimination.
- In particular, post-agreement security sector reform of the police, army and judiciary should take place in accordance with the principle of the equality of women and men. Peace agreement provision for security sector reform should ensure that recruitment and promotion procedures respect the principle of equality.
- Peace agreements that provide for institutional reform should establish a national women's machinery to ensure the promotion and protection of equality for women.

Dealing with the past

- Ad hoc or temporary justice institutions established by peace agreements, including but not limited to:
 - transitional justice mechanisms;
 - commissions of inquiry;
 - bodies to ensure the release of prisoners; and
 - bodies to ensure the return of refugees and displaced persons

should:

- include commitments to gender equality in their mandates;
- guarantee equal access to women;
- address the particular barriers to women's access that exist;
- take particular steps to prevent and address gender-based violence against women; and
- include staffing provisions and procedures appropriate to ensuring the effective implementation of these commitments.
- States should ensure that reparations laws, policies and programmes respect the principle of non-discrimination and pay due regard to the possible equality impact on women of any particular reparation mechanism chosen.
- Transitional justice processes that draw on traditional or restorative practices should not be implemented without adequate consultation with women and should be designed not to be discriminatory against women, but to be implemented in accordance with CEDAW equality obligations.
- The concept of reparations should be separated from the concept of relief for victims so as to ensure that victims receive financial and material support at the same time that ex-combatants receive such support as part of demobilisation packages, rather than await reparations processes.

Implementation

International oversight bodies should include appropriate gender representation, have access to gender advice, have mechanisms for dealing with complaints on grounds of discrimination, and generally take steps to ensure that women have equal access to their oversight mechanisms.

Disarmament, demobilisation and reintegration

DDR and DDR implementation processes should include robust measures to protect women from sexual exploitation, including:

- specific protection for women combatants being demobilised;
- specific protection for girls being demobilised;
- specific protection for women in close proximity to where demobilised troops are quartered; and
- specialised complaint mechanisms staffed by trained staff appropriate to enabling the raising of issues of sexual violence, trafficking, exploitation and prostitution.

Refugees and displaced persons

- Peace agreements should include provisions for the return or resettlement of refugees and displaced persons that ensure their physical and legal security.
- Processes for the return or resettlement of refugees should make special provision for the needs of women.
- Peace agreements providing for humanitarian aid and the resettlement of displaced populations should make provision for the gender-specific post-conflict health needs of women, such as anti-retroviral drugs and fistula repair surgery for women victims of sexual violence.

Access to health care

- Peace agreements should provide for socioeconomic rights, including the right to health care.
- The particular health-care needs of demobilising female combatants should be provided for.

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2-TOOLS FOR CONFLICT ANALYSIS

SUMMARY ■ In this chapter we begin by looking at the reasons for analysing conflict – analysis can be an intervention as well as a preparation for action.

We then set out nine specific tools for conflict analysis that can help you to:

- find out more about what is going on in a conflict
- identify areas where you need to know more
- begin to see ways in which you can influence the situation.

Introduction

In our work with people who are dealing with political and social conflicts we have found that gaining a better understanding of the dynamics, relationships and issues of the situation helps them to plan and carry out better actions and strategies. People gain this understanding in two ways:

- by carrying out a detailed analysis of the conflict from a variety of perspectives
- by exploring the specific issues and problems that relate to it.

In this chapter we explain and illustrate a number of practical tools and techniques that people have found useful in analysing the situations they are trying to address. They have been used by individuals working alone, by groups of people trying to find ways of addressing a conflict they were faced with, and by groups from different sides in a conflict who were trying to understand each other. Have a go at using these tools and techniques yourself. We have found that it is often only by trying them out in practice that people fully understand how they can help.

In Chapter 3 we shall examine some of the issues and themes that have arisen from analyses already carried out. These may also be issues for you, although you will probably identify others as you begin to analyse your own particular situation.

What is conflict analysis?

For many of those who are engaged in practical work on conflict, the concept of conflict analysis can seem quite remote from their own experience. It is sometimes seen as requiring objectivity and neutrality rather than personal experience and strong emotion. This is not our understanding of the concept. We see conflict analysis as a practical process of examining and understanding the reality of the conflict from a variety of perspectives. This understanding then forms the basis on which strategies can be developed and actions planned.

Conflict analysis can be done with the help of a number of simple, practical and adaptable tools and techniques. Some of the tools presented here are ones that we and our colleagues have invented, while others have been borrowed from other sources.

The tools and techniques explained in this chapter are not rigid processes. We would encourage you to adapt them, as necessary, to the particular circumstances being analysed. Don't feel that you have to follow our suggested steps if they don't seem to work in your own context. It is important to be as creative as possible in the approach you take.

WHY DO WE NEED TO ANALYSE CONFLICT?

- To understand the background and history of the situation as well as current events.
- To identify all the relevant groups involved, not just the main or obvious ones.
- To understand the perspectives of all these groups and to know more about how they relate to each other.
- To identify factors and trends that underpin conflicts.
- To learn from failures as well as successes.

Conflict analysis is not a one-time exercise. It must be an ongoing process as the situation

☉ Chuluke chuluke
mwa njuchi
umanena iyo
yakuluma.
Bees can be many,
but you must
know the one that
has stung you.
MALAWI

is developing, so that you can adapt your actions to changing factors, dynamics and circumstances.

Tools for analysing conflict situations

Some of the tools and techniques we suggest for conflict analysis may already be familiar to you from other sources. However, as you will see, here they have been adapted and used in new ways. Other tools may be unfamiliar to you, but all have been tried and used repeatedly and successfully in our courses and programmes, by people involved in many different types of conflict situation. In many cases groups have adapted the tools to suit a particular need. The examples given are based on the real experience of people around the world who have used the tools, adapting them to their own needs. Therefore each example is based on the perceptions of the people who worked on it.

On the following pages we shall explain nine of these tools for conflict analysis and illustrate how they have been used in specific cases:

- **STAGES OF CONFLICT**
- **TIMELINES**
- **CONFLICT MAPPING**
- **THE ABC (ATTITUDE, BEHAVIOUR, CONTEXT) TRIANGLE**
- **THE ONION (OR THE DOUGHNUT)**
- **THE CONFLICT TREE**
- **FORCE-FIELD ANALYSIS**
- **PILLARS**
- **THE PYRAMID**

The order in which you use the tools can be flexible, according to the situation you are analysing. Often they are best used in combination, with one tool highlighting certain factors or issues or points in time, which are then analysed with other tools. Remember that all the examples used reflect the perceptions of the people who drew them up. They are not meant to be the 'right' or only analysis. Your own

analysis, and that of the people you work with, will be informed by your own experiences, perceptions and values and may well be different. The tools presented here do not claim to be scientific, but they do open the way to inclusive and effective action.

ADAPTABILITY OF TOOLS

The tools have been applied effectively by groups of men and women from very different social backgrounds and varying levels of education – with pen and markers on paper, with chalk on a board or drawing with sticks in the dirt, using words, symbols and objects to represent the people, events or ideas concerned. We would encourage you to adapt the tools, as appropriate and necessary, in order to analyse the situation you are trying to address. We would be very pleased to hear about your adaptations. We are glad to receive any suggestions about how the tools can be used more effectively, so that we can pass them on to others.

PARTICIPATION

The tools can also be used to assist groups in developing a common understanding of a particular situation. This is useful when the analysis is being undertaken as a basis for action. By working together on the tools, individual members of an organisation or group can each see how the situation is understood from the viewpoint of the group as a whole, on the basis of the collective perceptions of its members. Where the group is made up of people from both sides of a conflict, the tools can provide a way for each side to begin to understand and respect the perspective of the other, while at the same time deepening its own analysis of what is happening.

LANGUAGES

These tools have been translated for use by colleagues in various parts of the world, so many of them are also available in French, Spanish, Russian, Khmer, Farsi, Somali and other languages (please contact RTC for more information).

**ROSALBA OYWA / GULU, UGANDA –
FOLLOWING A CONFLICT ANALYSIS WORKSHOP FOR COMMUNITY MEMBERS**

- **The main output I saw from the analysis was that it drew people together, because, to begin with, everybody saw that they were all being affected, whatever side they belonged to. Whether they sympathise with rebels, whether they are government supporters, whether they belong to any religious denominations, whether they call themselves anything – all of them are being affected in a similar way, so there is no point in them thinking that, by doing this, I am gaining, because there is no gain in this war. That was the key realisation.**

Stages of conflict

Conflicts change over time, passing through different stages of activity, intensity, tension and violence. It is helpful to recognise these stages and use them together with other tools to analyse the dynamics and events that relate to each stage of the conflict.

The basic analysis comprises five different stages, which generally occur in the order given here (although there may be variations in specific situations) and may recur in similar cycles. These stages are:

- **PRE-CONFLICT:** This is the period when there is an incompatibility of goals between two or more parties, which could lead to open conflict. The conflict is hidden from general view, although one or more of the parties is likely to be aware of the potential for confrontation. There may be tension in relationships between the parties and/or a desire to avoid contact with each other at this stage.
- **CONFRONTATION:** At this stage the conflict has become more open. If only one side feels there is a problem, its supporters may begin to engage in demonstrations or other confrontational behaviour. Occasional fighting or other low levels of violence may break out between the sides. Each side may be gathering its resources and perhaps finding allies with the expectation of increasing confrontation and violence. Relationships between the sides are becoming very strained, leading to a polarisation between the supporters of each side.

- **CRISIS:** This is the peak of the conflict, when the tension and/or violence is most intense. In a large-scale conflict, this is the period of war, when people on all sides are being killed. Normal communication between the sides has probably ceased. Public statements tend to be in the form of accusations made against the other side(s).
- **OUTCOME:** One way or another the crisis will lead to an outcome. One side might defeat the other(s), or perhaps call a cease-fire (if it is a war). One party might surrender or give in to the demands of the other party. The parties may agree to negotiations, either with or without the help of a mediator. An authority or other more powerful third party might impose an end to the fighting. In any case, at this stage the levels of tension, confrontation and violence decrease somewhat with the possibility of a settlement.
- **POST-CONFLICT:** Finally, the situation is resolved in a way that leads to an ending of any violent confrontation, to a decrease in tensions and to more normal relationships between the parties. However, if the issues and problems arising from their incompatible goals have not been adequately addressed, this stage could eventually lead back into another pre-conflict situation.

Figure 2.1 on the following page gives an example of how this tool was used to look at stages of conflict in Central and Western Uganda as compared to stages occurring in

STAGES OF CONFLICT

WHAT IS IT?

- ▶ A graphic that shows the increasing and decreasing intensity of conflict plotted along a particular timescale.

PURPOSE

- ▶ To see the stages and cycles of escalation and de-escalation of conflict.
- ▶ To discuss where the situation is now.
- ▶ To try to predict future patterns of escalation with the aim of preventing these from occurring.
- ▶ To identify a period of time to be analysed later using other tools.

WHEN TO USE IT

- ▶ Early in a process of analysis to identify patterns in the conflict.
- ▶ Later to help in the process of strategy-building.

VARIATION

- ▶ Analyse stages from the viewpoints of different sides or different parts of a country in conflict.
- ▶ Use a fire analogy, seeing these stages as the increasing and decreasing intensity of a fire. (See *Playing With Fire* by Nic Fine & Fiona Macbeth – details in Chapter 10.)

FIGURE 2.1:
STAGES OF CONFLICT
(EXAMPLE 1 FROM
UGANDA)

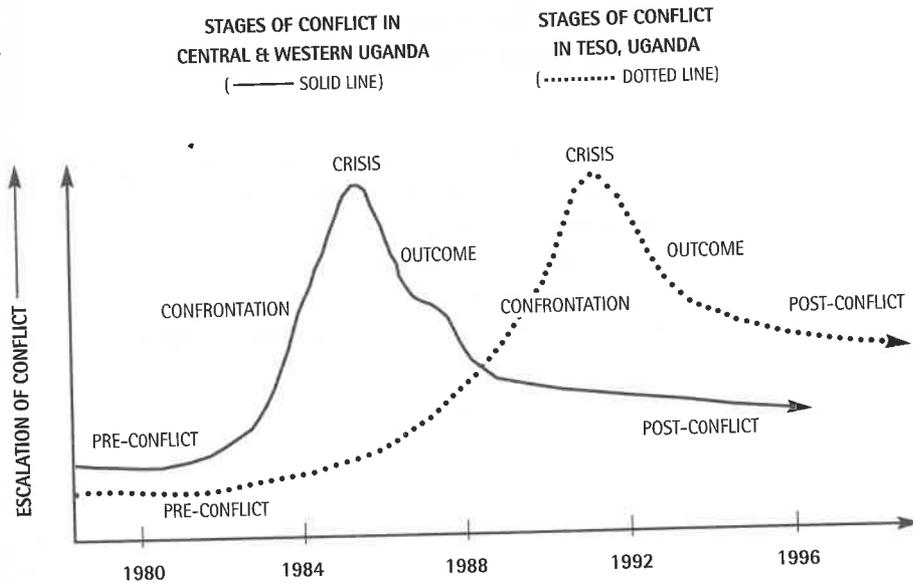
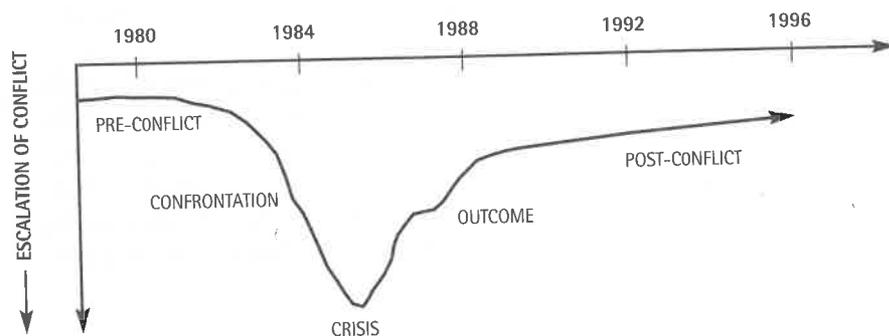


FIGURE 2.2:
STAGES OF CONFLICT
(EXAMPLE 2 FROM
UGANDA)



the Teso region of Northeast Uganda during the same time period.

This example illustrates the fact that the conflict was more intense (and perceived as such) in Central and Western Uganda during 1984–6, whereas the confrontation and crisis occurred later (1988–92) in the Teso region. So, while one part of the country felt relatively peaceful, another was in the midst of violent war and extreme insecurity, and vice versa. This suggests the need to analyse both of these periods in order to understand the conflict from the perspective of both parts of the country.

A variation in the use of this tool is to show the escalation of conflict in a downward direction, as a negative movement in the situation, and the de-escalation in the upward direction. Figure 2.2 uses this method to show the stages for Central and Western Uganda.

Timelines

In principle, a timeline is a very simple tool. It is a graphic that shows events plotted against time. It lists dates (years, months or days, depending on the scale) and depicts events in chronological order. You could use this method

TABLE 2.1: TIMELINE (EXAMPLE 3 FROM UGANDA)

EVENTS AS VIEWED BY PEOPLE OF TESO	1986	EVENTS AS VIEWED BY UGANDAN GOVERNMENT
Retreating soldiers loot Teso		
	1987	National Resistance Army (NRA) takes Kampala, sets up new government
NRA disarms Teso local militia		
Karamojong raid cattle	1988	NRA encounters armed militia in Teso
Former army officers in Teso form rebel army		
	1989	NRA continues fighting opposition in North
People move to towns or leave area, to avoid fighting		
	1990	Government sends army to Teso to stop rebellion
Government soldiers herd people into concentration camps		
• inadequate food, water		
• people forced to inform on rebels		
	1991	Government ministers try to mediate and are kidnapped by rebels (one killed)
Elders of Teso contact their 'sons' in rebel army to try to stop the fighting		
	1992	Church leaders try to mediate between government and rebels
Rebels stop fighting for the good of their people		
		Rebels surrender

to show a succession of events in your own life, for example, or the history of your country. In this case, you can use timelines to show the history of a conflict.

In a conflict, groups of people often have completely different experiences and perceptions: they see and understand the conflict in quite distinct ways. They often have different histories. People on opposing sides of the conflict may note or emphasise different events, describe them differently, and attach contrasting emotions to them.

The aim of using timelines in this way is not to try to arrive at a 'correct' or 'objective' history but to understand the perceptions of the people involved. For this reason, the different events described by opposing groups are an important element in understanding the conflict.

The timeline is also a way for people to learn about each other's history and perceptions of the situation. And in discussing their different perceptions of the conflict, and the events that each group commemorates, they will develop a richer understanding of their shared situation.

USING A TIMELINE

A timeline as we use it here is not primarily a research tool, but a way to prompt discussion and learning. In conflict it is to be expected that people will disagree about which events are important and how to describe them. We aim to reach a point where the parties in a conflict can accept that others may have valid perceptions, even if these are opposed to their own.

Table 2.1 outlines an example of how this tool was used to look at events in Uganda as

TIMELINE

WHAT IS IT?

► A graphic that shows events plotted against a particular time-scale.

PURPOSE

► To show different views of history in a conflict.

► To clarify and understand each side's perception of events.

► To identify which events are most important to each side.

WHEN TO USE IT

► Early in a process, along with other analytical tools.

► Later in the process to help in strategy-building.

► When people disagree about events, or don't know each other's history.

► As a way of helping people to accept their own perspective as only part of the 'truth'.

VARIATIONS

► Used by the parties themselves and shared with each other.

► Followed by a discussion about events that are highlighted by each side.

► Adding a line for peace initiatives during the same time period.

viewed by the people of the Teso region and by the national government. Note how each side remembers different events and has a different interpretation of events. In constructing time-lines from different perspectives of your own conflicts, you too may find this to be the case. Try doing this and see whether you agree.

Conflict mapping

Mapping is a technique used to represent a conflict graphically, placing the parties in relation both to the problem and to each other. When people with different viewpoints map their situation together, they learn about each other's experiences and perceptions.

HOW TO MAP A CONFLICT SITUATION

1. Decide **what** you want to map, **when**, and from what **point of view**. Choose a particular moment in a specific situation. If you try to map the whole of a regional political conflict in detail, the result may be so time-consuming, so large and so complex that it is not really helpful.
It is often useful to do several maps of the same situation from a variety of viewpoints and see how the different parties might perceive it. Trying to reconcile the differing viewpoints is the reality of working on the conflict. It is a good discipline to ask whether those who hold a particular view would actually accept your description of their relationships with the other parties.
2. **Don't forget to place yourself and your organisation on the map.** Putting yourself on the map is a reminder that you are part of the situation, not above it, even when you analyse it. You and your organisation are perceived in certain ways by others. You may have contacts and relationships that offer opportunities and openings for work with the parties involved in the conflict.
3. Mapping is dynamic – it reflects a particular point in a **changing situation** and points towards **action**. This kind of analysis should offer new possibilities. What can be done?

Who can best do it? When is the best moment? What groundwork needs to be laid beforehand, what structures built afterwards? These are some of the questions you should ask as you are carrying out the mapping.

4. In addition to the 'objective' aspects, it is useful to map the **issues** between parties that are in conflict. Why does the conflict exist? These can be put in a box, as we have done in the following examples, or you may have a better way of showing what the issues are.

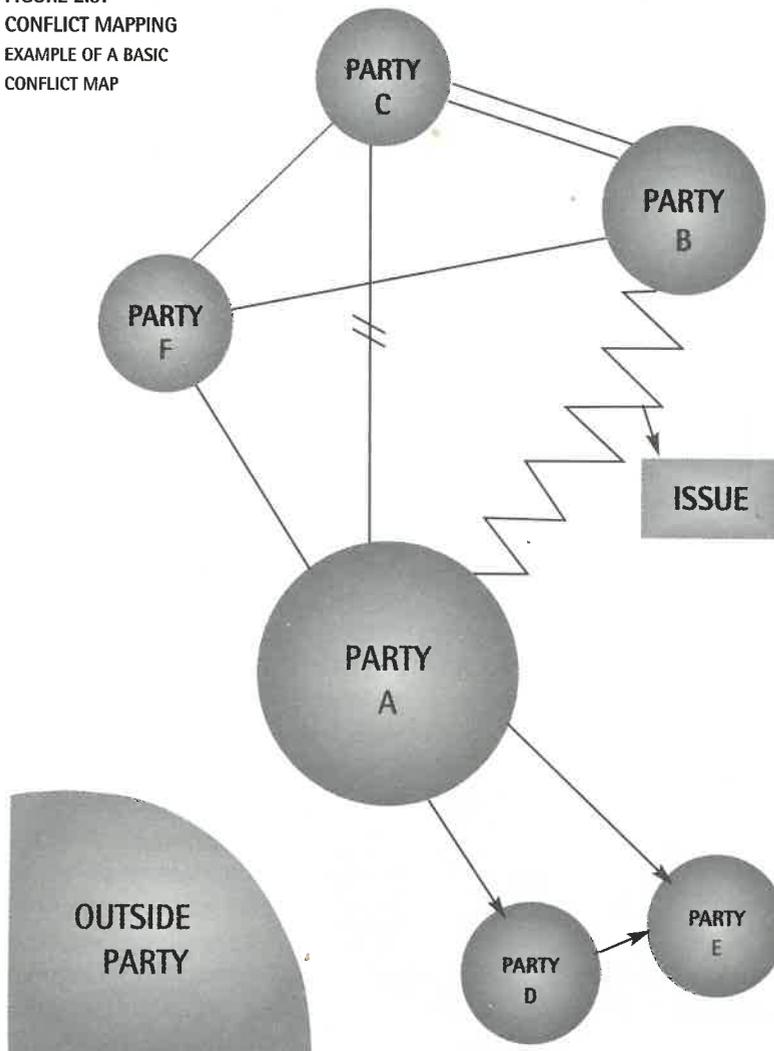
It may also be useful to think about the position of the conflicting parties. What are their views of the other groups involved in the situation?

EXAMPLES OF CONFLICT MAPPING

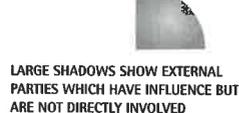
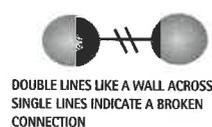
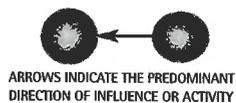
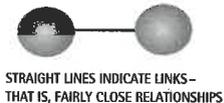
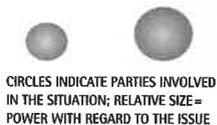
Here we look at three examples of Conflict Mapping:

- The first example, Figure 2.3, shows what a basic conflict map might look like. Try making a map of a situation you are currently working on. Some questions you might ask are:
 - Who are the main parties in this conflict?
 - What other parties are involved or connected in some way, including marginalised groups and external parties?
 - What are the relationships between all these parties and how can these be represented on the map? Alliances? Close contacts? Broken relationships? Confrontation?
 - Are there any key issues between the parties that should be mentioned on the map?
 - Where are you and your organisation in relation to these parties? Do you have any special relationships that might offer openings for working on this conflict situation?
- A second example, this time of a conflict within a family, is shown in Figure 2.4. The primary conflict examined here is between a father and daughter, over whether or not to go ahead with an arranged marriage. Notice the thickness of the line that is used to represent

FIGURE 2.3:
CONFLICT MAPPING
EXAMPLE OF A BASIC
CONFLICT MAP



KEY: In mapping, we use particular conventions. You may want to invent your own.



CONFLICT MAPPING

WHAT IS IT?

▶ A visual technique for showing the relationships between parties in conflict.

PURPOSE

- ▶ To understand the situation better.
- ▶ To see more clearly the relationships between parties.
- ▶ To clarify where the power lies.
- ▶ To check the balance of one's own activity or contacts.
- ▶ To see where allies or potential allies are.
- ▶ To identify openings for intervention or action.
- ▶ To evaluate what has been done already.

WHEN TO USE IT

- ▶ Early in a process, along with other analytical tools.
- ▶ Later, to identify possible entry points for action or to help the process of strategy-building.

VARIATIONS

- ▶ Geographical maps showing the areas and parties involved.
- ▶ Mapping of issues.
- ▶ Mapping of power alignments.
- ▶ Mapping of needs and fears.
- ▶ As a human sculpture to bring out feelings and relationships.

FIGURE 2.4: CONFLICT MAPPING / EXAMPLE 2
CONFLICT WITHIN THE FAMILY

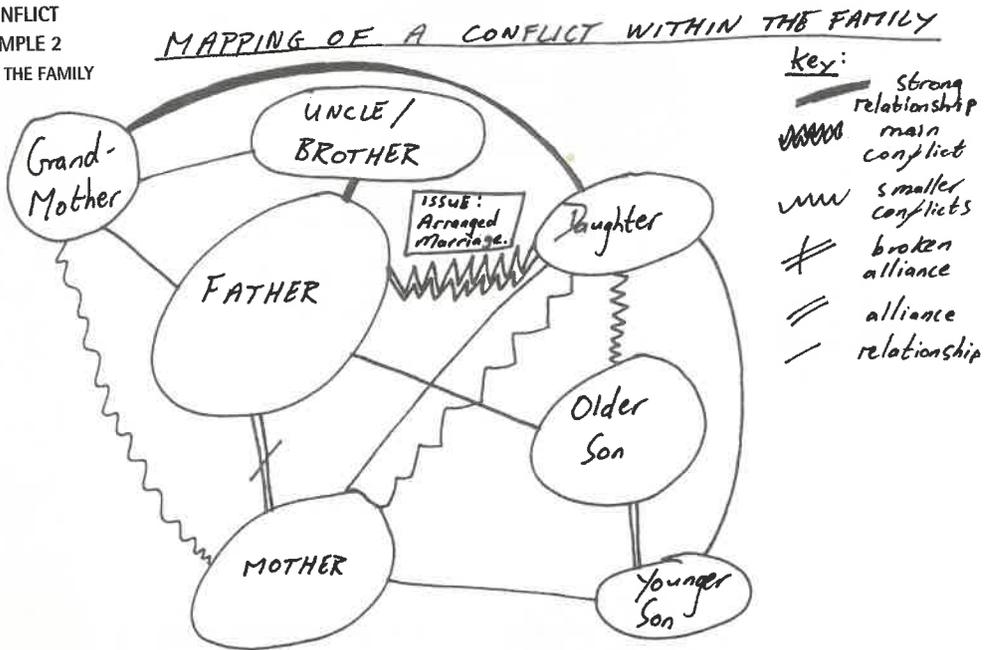
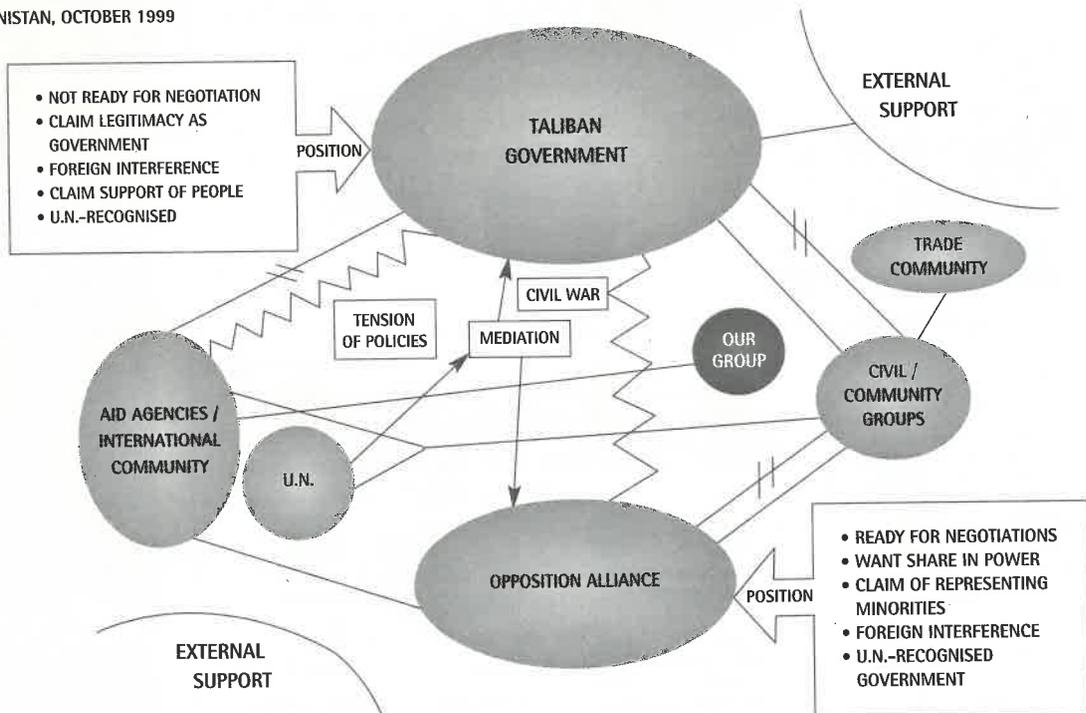


FIGURE 2.5: CONFLICT MAPPING / EXAMPLE 3
AFGHANISTAN, OCTOBER 1999



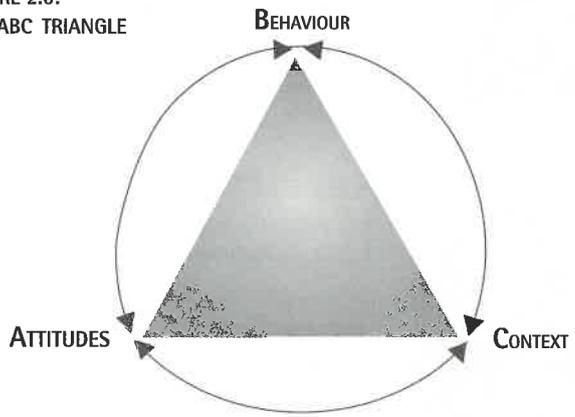
the strength of the relationship between the grandmother and the daughter, the broken relationship between the mother and father, and the ways in which the two brothers are divided over who to support in the conflict despite the bond between them. This example shows how the technique of mapping can be adapted to suit a range of situations.

Although this is an example of how mapping can be used to represent parties within a family dispute, it is a technique that can also be used to depict large-scale conflicts – for example, conflict between the members of a community, or even a national or international conflict.

■ The third example, Figure 2.5, shows a mapping analysis of Afghanistan from the perspective of a small, locally based NGO. It illustrates the conflict between the Taliban government and the opposition forces within Afghanistan. Looking at the mapping, it is easy to identify the main parties involved in the context, as well as the relationships between them. While the conflict relationship between the Taliban and the opposition (represented by the bold jagged line) is the core issue in the context and the basis for the civil war, certain other relationships are also important and need to be brought into focus when analysing this situation.

You can draw boxes, as shown, to indicate the viewpoints of the main parties. This will show how they see the context differently, and thus help you to find entry points for action to address the conflict. The other, less powerful parties, such as the civil groups and the trade community, may not appear to be influencing the situation directly, but by including them in your map you are making sure that all possible means of intervention are considered. The organisation from whose perspective this map is drawn has been placed on the map where it sees itself in the context – ‘our group’. It is related to the aid agencies and has strong links with civil and community groups. (We will come back to this example in Chapter 4 to examine how a map such as this can be used to identify entry points for taking action.)

FIGURE 2.6:
THE ABC TRIANGLE



SOURCE: C.R. MITCHELL, *THE STRUCTURE OF INTERNATIONAL CONFLICT*, MACMILLAN, 1981

Mapping on its own, however, cannot provide all of the answers. As with all these tools, it only provides partial insight into the nature of a conflict. Often it is the issues underlying the observed relationships that lie at the root. The following tools offer some insight into how to begin to uncover those underlying causes.

The ABC Triangle

This analysis is based on the premise that conflicts have three major components: the **context** or situation, the **behaviour** of those involved and their **attitudes**. Figure 2.6 represents these graphically as the corners of a triangle.

These three factors influence each other, hence the arrows leading from one to another. For example, a context that ignores the demands of one group is likely to lead to an attitude of frustration, which in turn may result in protests. This behaviour might then lead to a context of further denial of rights, contributing to greater frustration, perhaps even anger, which could erupt into violence. Work that is done to change the context (by making sure that demands are acknowledged), to reduce the level of frustration (by helping people to focus on the long-term nature of their struggle) or to provide outlets for behaviours that are not violent will all contribute to reducing the levels of tension.

ABC TRIANGLE

WHAT IS IT?

► An analysis of factors related to Attitude, Behaviour and Context for each of the major parties.

PURPOSE

► To identify these three sets of factors for each of the major parties.

► To analyse how these influence each other.

► To relate these to the needs and fears of each party.

► To identify a starting point for intervention in the situation.

WHEN TO USE IT

► Early in the process to gain a greater insight into what motivates the different parties.

► Later to identify what factors might be addressed by an intervention.

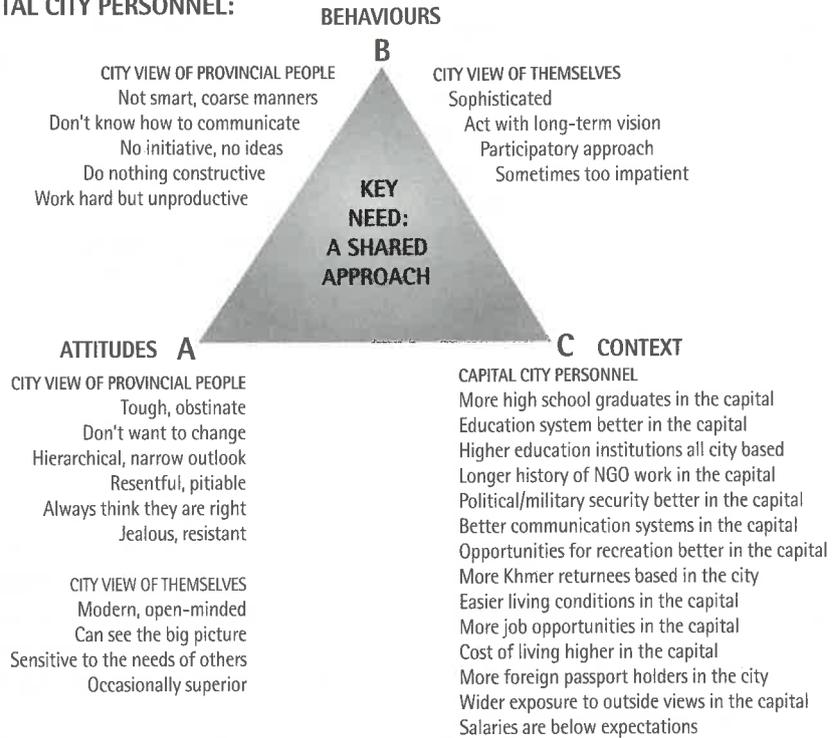
► To reveal how a change in one aspect might affect another.

VARIATIONS

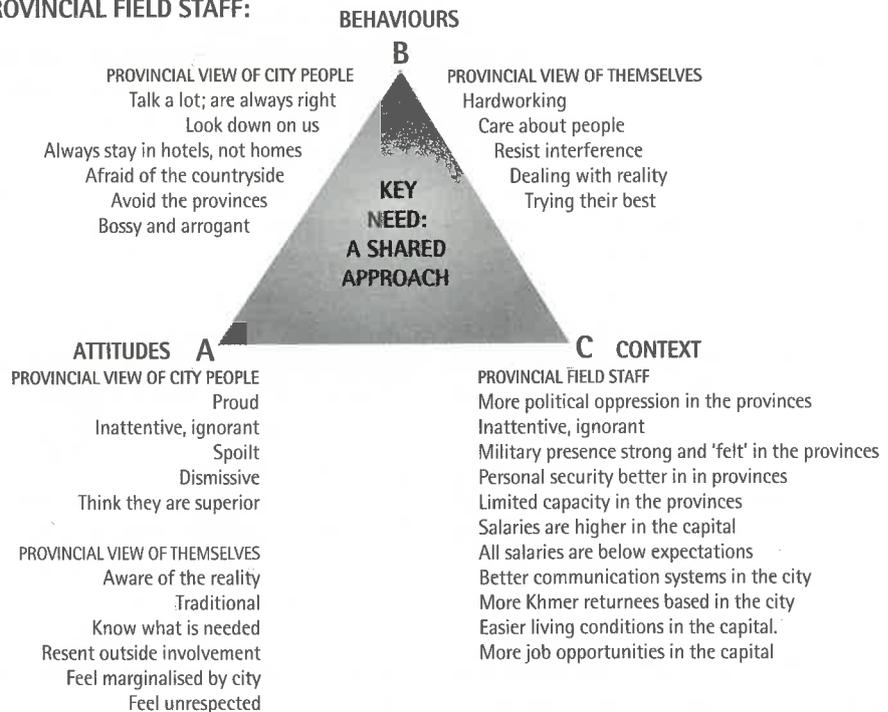
► After listing issues for each of the 3 components, indicate a key need or fear of that party in the middle of the triangle.

TABLE 2.2: ABC ANALYSIS OF INTERNAL ORGANISATIONAL CONFLICT –
EXAMPLE: CONFLICT BETWEEN CAPITAL-BASED STAFF AND PROVINCIAL FIELD STAFF OF AN ORGANISATION IN CAMBODIA

I. CAPITAL CITY PERSONNEL:



II. PROVINCIAL FIELD STAFF:



HOW TO USE THIS TOOL

1. Draw up a separate ABC Triangle for each of the major parties in the conflict situation.
2. On each triangle, list the key issues related to **attitude**, **behaviour** and **context** from the viewpoint of that party. (If the parties are participating in this analysis, then they can each make a triangle from their own perspective.)
3. Indicate for each party what you think are their most important needs and/or fears in the middle of their own triangle. This will be YOUR perception.
4. Compare the triangles, noting similarities and differences between the perceptions of the parties.

In the case of any given conflict, different parties have different experiences and contrasting perceptions. For these reasons, they are likely to attribute the conflict to different causes. One side may, for example, claim that the root problem is injustice, while another side may feel that it is insecurity. Each group is focused on the issues that concern it most, and particularly the areas where it is suffering most. All of these causes and issues are real and important, and all will have to be addressed before the conflict can be resolved and the situation improved. Meanwhile, a great deal of energy may go into attacking those who see different causes or concentrate on different issues. One challenge is to try to help everyone involved to see that all the different issues are part of the problem, although certainly some will be more urgent or important than others.

In using the ABC Triangle it is important to be sure about whose perception the analysis is based upon. You could do the analysis entirely on your own perception of the realities in the conflict if you are closely involved in it. Otherwise, it will be important to put yourself in the shoes of each of the main parties and look at the issues in the conflict as they see it in terms of 'context', 'behaviour' and 'attitude'.

Table 2.2 analyses the tension between rural and urban members of an international aid agency in Cambodia. While the context is

similar for both groups they emphasise different things and each views the behaviour and attitudes of the other quite differently.

The Onion

Figure 2.7 is based on the analogy of an onion and its layers. The outer layer contains the **positions** that we take publicly, for all to see and hear. Underlying these are our **interests** – what we want to achieve from a particular situation. Finally, at the core are the most important **needs** we require to be satisfied. It is useful to carry out this Onion analysis for each of the parties involved.

In times of stability, when relationships are good and trust is high, our actions and strategies may stem from our most basic **needs**. We may be willing to disclose these needs to others and to discuss them openly, if we trust the others. And through analysis and empathy, they may be able to grasp our needs even before we disclose them.

In more volatile or dangerous situations, when there is mistrust between people, we may want to keep our basic needs hidden. To inform others of them would reveal our vulnerability and perhaps give them extra power over us. But if we hide things from the other side,

THE ONION

WHAT IS IT?

▶ A way of analysing what different parties to a conflict are saying.

PURPOSE

- ▶ To move beyond the public position of each party and understand each party's interests and needs.
- ▶ To find the common ground between groups that can become the basis for further discussions.

WHEN TO USE IT

- ▶ As part of an analysis to understand the dynamics of a conflict situation.
- ▶ In preparation for facilitating dialogue between groups in a conflict.
- ▶ As part of a mediation or negotiation process.

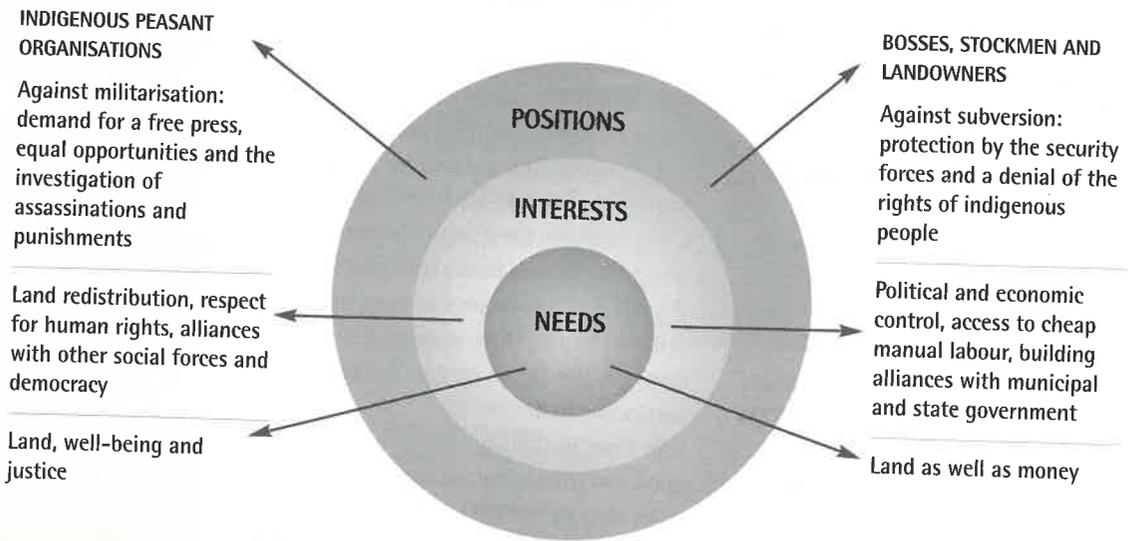
VARIATIONS

- ▶ Some groups prefer to see the graphic as a doughnut rather than an onion.

FIGURE 2.7:
THE ONION



FIGURE 2.8: THE ONION – AN EXAMPLE FROM CHIAPAS, MEXICO



SOURCE: MARIA GUADELUPE MACIAS VILLARREAL

they are also less likely to be able to grasp our needs through analysis or empathy, as a result of lack of knowledge and because mistrust changes people's perceptions of each other.

Thus, in a situation of conflict and instability, actions may no longer come directly from needs. People may look at the more collective and abstract level of **interests** and base their actions on these. When those interests are under attack, they may take up and defend a **position** that is still further removed from their basic needs.

This type of analysis is useful for parties who are involved in negotiation, to clarify for themselves their own needs, interests and positions. Then, as they plan their strategies for the negotiation, they can decide how much of the interior 'layers' – interests and needs – they want to reveal to the other parties involved.

As suggested above, people may choose to reveal more when the level of trust has risen. But, even if they are slow to do this to the other side(s), at least they will gain awareness of the needs that are most important to them – enabling them to identify those interests on which they might be willing to compromise.

Thus, in the example shown in Figure 2.8 one group of people (indigenous peasant organisations) has a **need** for land, well-being and justice. Their **interest** is in land redistribution, respect for human rights, alliances with other social forces and democracy. But, because of the crisis in which they are involved, what they express publicly is their **position** – they are against militarisation and demand a free press, equal opportunities and the investigation of assassinations and punishments.

The second group of people (bosses, stockmen and landowners) also have a **need** for land, in addition to money. Their **interest** is in political and economic control, access to cheap manual labour, and building alliances with the state and municipal government. Their publicly expressed **position** is strongly against subversion, protection by the security forces and denial of the rights of indigenous people.

It is easy to see how groups that are locked into defending their positions will find it very difficult to find any common ground. This might, then, mean that their actual needs are not met, and are unlikely to be met in the future.

The point of the Onion is to show graphically the possibility of peeling away as many as possible of the layers that build up as a result of conflict, instability and mistrust, in order to try to meet the underlying needs that form the basis of people's individual and group actions.

A long-term goal is to improve communication and trust to the point where people can reveal their own real needs and also understand and try to meet each other's needs. However, even before this point is reached people can be challenged to examine whether their actions and strategies are a good way to further their own interests and meet their own needs.

The Conflict Tree

This tool is best used within groups – i.e. collectively rather than as an individual exercise. If you are familiar with the 'Problem Tree' from development and community work, you will

recognise that we have borrowed and adapted this for use in conflict analysis.

In many conflicts there will be a range of opinions concerning questions such as:

- What is the core problem?
- What are the root causes?
- What are the effects that have resulted from this problem?
- What is the most important issue for our group to address?

The Conflict Tree offers a method for a team, organisation, group or community to identify the issues that each of them sees as important and then sort these into three categories: (1) core problem(s), (2) causes and (3) effects.

HOW TO USE THIS TOOL

1. Draw a picture of a tree, including its roots, trunk and branches – on a large sheet of paper, a chalkboard, a flipchart, on the side of a building or on the ground.

THE CONFLICT TREE

WHAT IS IT?

▶ A graphic tool, using the image of a tree to sort key conflict issues.

PURPOSE

▶ To stimulate discussion about causes and effects in a conflict.

▶ To help a group to agree on the core problem.

▶ To assist a group or a team to make decisions about priorities for addressing conflict issues.

▶ To relate causes and effects to each other and to the focus of the organisation.

WHEN TO USE IT

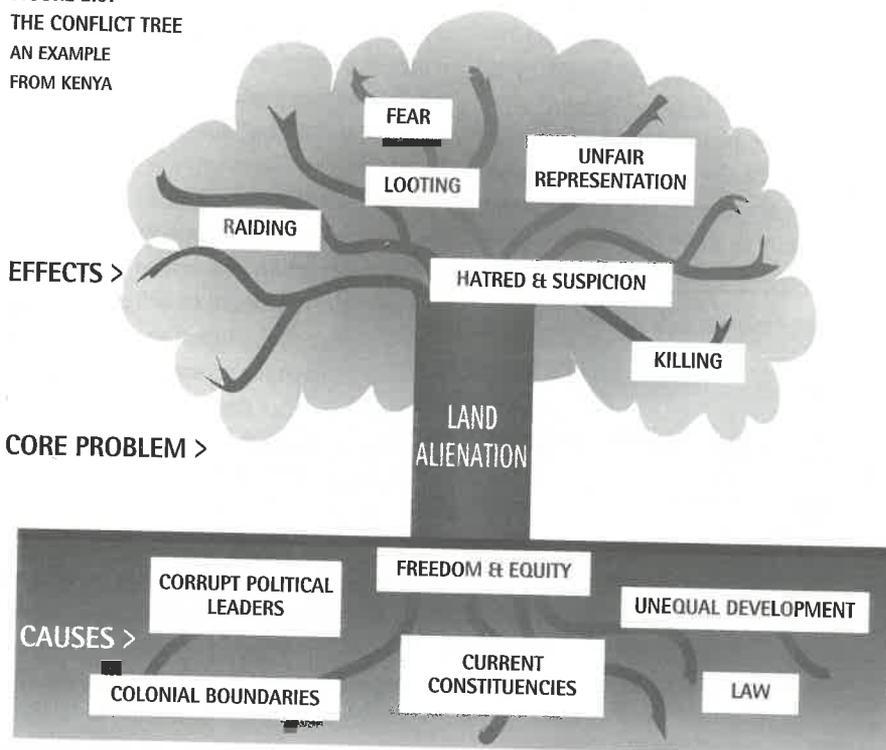
▶ With a group having difficulty in agreeing about the core problem in their situation.

▶ With a team who need to decide about which conflict issues they should try to address.

VARIATIONS

▶ Can be used to explore values. See Chapter 5 for more on this.

FIGURE 2.9:
THE CONFLICT TREE
AN EXAMPLE
FROM KENYA



FORCE-FIELD ANALYSIS

WHAT IS IT?

▶ A tool for analysing both positive and negative forces in a conflict.

PURPOSE

▶ To identify those forces which either support or hinder a plan of action or a desired change.

▶ To assess the strength of these forces and our own abilities to influence them.

▶ To determine ways of increasing the positive forces or decreasing the negative forces.

WHEN TO USE IT

▶ When planning an action or strategy, to clarify the forces that might support or hinder what you intend to do.

• While implementing a strategy of change, to assess the strength of other forces and your ability to influence these.

2. Give each person several index cards, or similar paper, on which to write a word or two, or draw a symbol or picture, indicating a key issue in the conflict as they see it.
3. Invite people to attach their cards to the tree:
 - on the trunk, if they think it is the core problem,
 - on the roots, if they think it is a root cause,
 - on the branches, if they see it as an effect.
4. After all the cards have been placed on the tree, someone will need to facilitate a discussion so that the group can come to some agreement about the placement of issues, particularly the core problem.
5. An optional next step is to ask people to visualise their own organisation as a living organism (e.g. a bird, a worm, ivy) and place this on the tree in relation to the issues it is currently addressing. Is current work focusing mainly on the consequences, the roots, or the core problem?
6. If an agreement has been reached, people may want to decide which issues they wish to address first in dealing with the conflict.
7. This process may take a long time and need to be continued in further group meetings.

The Conflict Tree pictured in Figure 2.9 on page 29 is what the tree looked like after names of issues or problems were added by members of a community in Wajir, Northeast Kenya.

They agreed that, in their situation, 'Land Alienation' was the core problem, with other issues being either causes or effects.

You will find when you try this tool that many issues can be seen as both causes and effects of the conflict. For example, scarcity of food is often a cause of conflict between groups, but it is also often the consequence of normal cultivation being disrupted by violence. This can form the basis for a useful discussion about the cycle of violence and the way in which communities can become trapped by conflict. There is no reason why, graphically, the same issues cannot appear in both places.

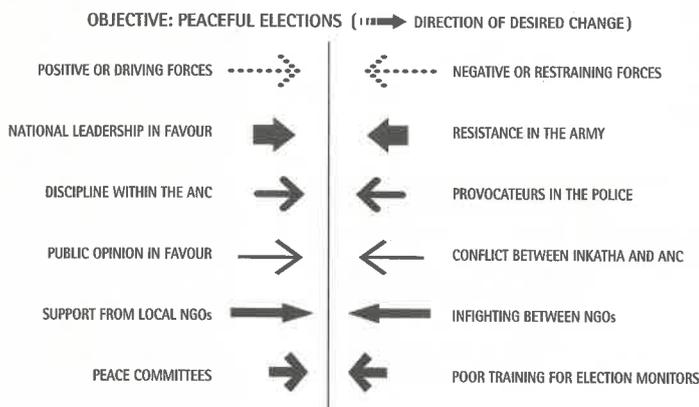
Force-Field Analysis

This tool can be used to identify the different forces influencing a conflict. Whenever you are taking some action to bring about change, there will be other forces that are either supporting or hindering what you are trying to achieve. This tool offers a way of identifying these positive and negative forces and trying to assess their strengths and weaknesses. It can also help you to see more clearly what is maintaining the status quo.

HOW TO USE THIS TOOL

1. Begin by naming your specific objective, i.e. the action you intend to take or the change you desire to achieve. Write this objective at the top of the page and draw a line down the centre of the page.
2. On one side of the line, list all the forces that seem to support and assist the action or change that is to happen. Next to each one draw an arrow towards the centre, varying the length and/or thickness of the arrow to indicate the relative strength of each force. These arrows are pointing in the direction of the desired change.
3. On the other side of the line, list all the forces that seem to restrain or hinder the desired action or change from happening. Next to each one draw an arrow pointing

TABLE 2.3: FORCE-FIELD ANALYSIS – EXAMPLE FROM SOUTH AFRICA



back towards the centre, against the direction of desired change. Again, the length and/or thickness of each arrow can indicate its relative strength.

4. Now, consider which of these forces you can influence, either to strengthen the positive forces or to minimise in some way the negative forces, so as to increase the likelihood of the desired change taking place.
5. You may want to review your plan of action and make modifications to your strategy in order to build upon the strengths of positive forces, while also trying to minimise, or remove, the effects of the negative ones.

Table 2.3, left, is an example of Force-Field Analysis, based on a particular situation in one part of South Africa during the period leading up to the national elections in 1994.

In this table the estimated strength of each force is indicated by the thickness of the arrows. After the analysis had been carried out, the following strategies were suggested:

- National political leadership to exercise more control over local membership, and also over negative elements in the army and police.
- Bring representatives of Inkatha and the ANC together in Peace Committees.
- Include members of the army and the police in Peace Committees at all levels.

- Mobilise public support through national media campaign.
- Provide better training for election monitors – recruit more of them with the help of NGOs.

Pillars

This graphic tool is based on the premise that some situations are not really stable, but are 'held up' by a range of factors or forces – the 'pillars'. If we can identify these pillars and try to find ways to remove them or minimise their effect on the situation, we will be able to topple a negative situation and build a positive one.

HOW TO USE THIS TOOL

1. Identify the unstable situation (conflict, problem or injustice) and show this as an inverted triangle standing on one point.
2. Next identify the forces or factors seeming to maintain this situation. Show them as the 'supporting pillars' on both sides of the triangle.
3. Consider how each of these pillars might be weakened or removed from the situation. Briefly list your strategies for each pillar.
4. Also consider what stable situation could replace this unstable one.

The example in Figure 2.10 is from Afghanistan. The problem to be analysed and addressed is

PILLARS

WHAT IS IT?

► A graphic illustration of elements or forces that are 'holding up' an unstable situation.

PURPOSE

► To understand how structures are sustained.

► To identify factors that are maintaining an undesirable situation.

► To consider ways to weaken or remove these negative factors, or perhaps to change them to more positive forces.

WHEN TO USE IT

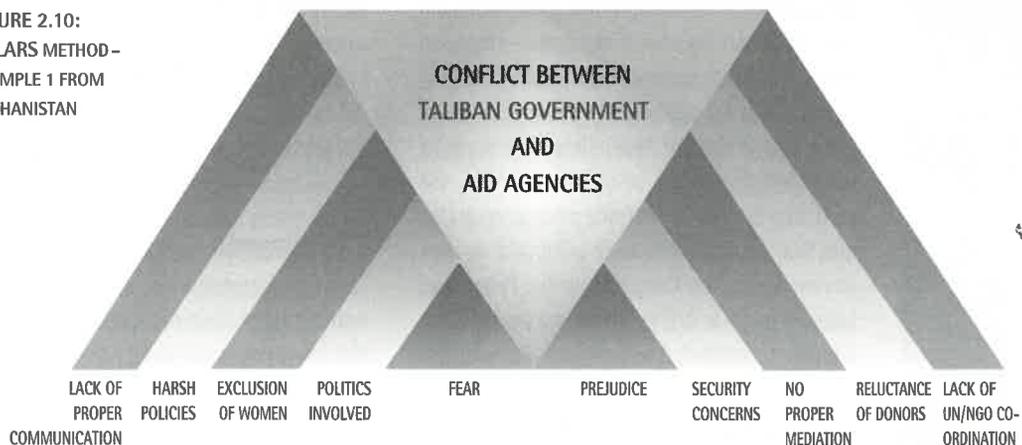
► When it is not clear what forces are maintaining an unstable situation.

► When a situation seems to be 'stuck' in a kind of structural injustice.

VARIATIONS

► Draw the changes that have already happened, and what would sustain the future you hope for.

FIGURE 2.10:
PILLARS METHOD –
EXAMPLE 1 FROM
AFGHANISTAN



ORIGINALLY DEVELOPED BY JEAN AND HILDEGAARD GOSS-MAYR

**FIGURE 2.11: PILLARS METHOD—
EXAMPLE 2 FROM AFGHANISTAN
COOPERATION FOR PEACE
AND UNITY NETWORK STRATEGY**



the conflict between the Taliban authorities and the aid agencies. On one side the pillars holding up the conflict are mostly those caused by, or relating to, the authorities, e.g. harsh policies, exclusion of women, and fear. On the other side, there are pillars representing lack of coordination, security concerns and prejudice, which pertain directly to the aid agencies. Some of the pillars might be more crucial than others, and some are more difficult to influence than others. It may be that work will have to be done by colleagues at other levels to influence, for instance, the politics concerning the situations and policies of the donor countries. However, the situation will improve if any of these pillars is weakened or removed.

Having looked at the pillars that support the conflict, problem or unjust situation, the next step is to devise definite actions or strategies that could address each pillar and weaken or remove it. The Cooperation for Peace and Unity Network in Afghanistan, who analysed the situation, proceeded as in Figure 2.11. In this example, there is one suggested solution for each problem. In fact, you could think of many other options and suggest more ways of tackling each problem. One possible way of using

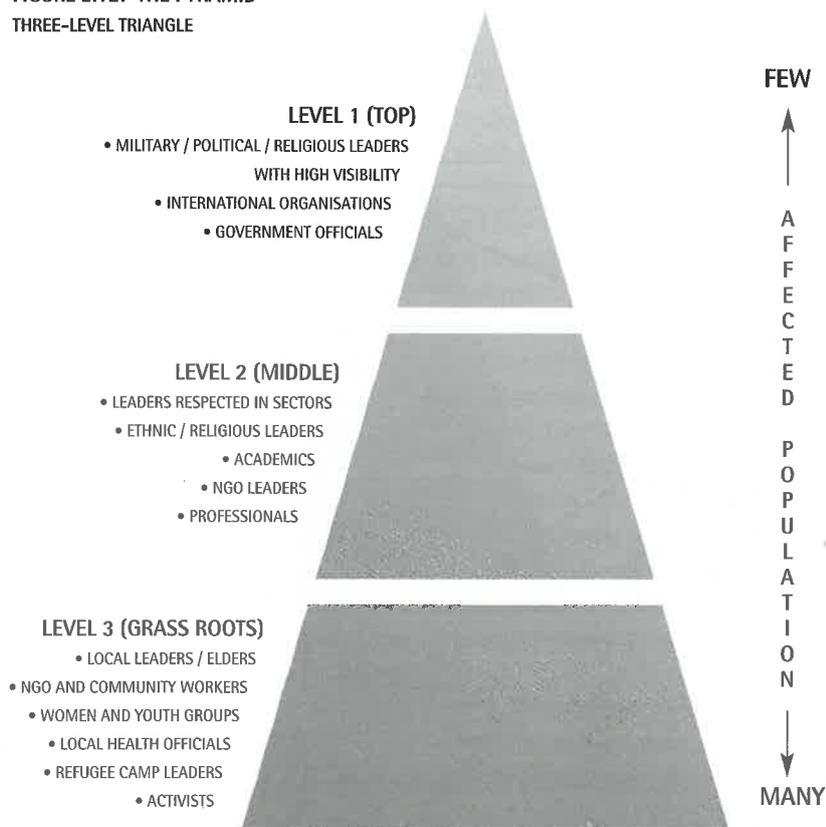
this tool is to list the pillars separately and then brainstorm in your group the solutions to each.

It is not necessary to make decisions about possible actions at this stage. You will probably still be doing more analysis, and you should consider further options from the following chapters before taking action. However, the Pillars tool can help you to see at a glance how feasible it is to intervene. While it may be starkly evident that little can be done about some of the problems, and although some of the solutions suggested may be beyond your capabilities, this diagram does provide an opportunity for you to consider which other individuals and organisations could become allies, and to learn of constructive actions already taking place.

The Pyramid

This tool is needed when you start to analyse conflicts that have more than one level. With this method, you identify the key parties or actors at each level. In Figure 2.12 we have used three levels, but in your situation there may be only two, or alternatively you may wish to use more than three levels.

FIGURE 2.12: THE PYRAMID
THREE-LEVEL TRIANGLE



ADAPTED FROM JOHN PAUL LEDERACH (SEE RESOURCES SECTION AT END OF BOOK)

As you consider each of the levels in the diagram and relate them to your own situation, you may find that most of your work is aimed at only one level. This can make it difficult to bring about lasting change because of the effect of the other levels on your context.

This type of analysis helps you to locate critical resource people who are strategically placed and embedded in networks that connect them vertically within the setting and horizontally in the conflict. These are people who have the ability to work with counterparts across the lines of division, therefore they can be key allies for working within the various levels as well as working simultaneously at all levels.

We will return to this analysis in Chapter 4 when we consider strategies for action.

THE PYRAMID – AN EXAMPLE FROM GUATEMALA

Luis R. Dávila S. is Co-Director of the Research Council for Central American Development, and a former Working With Conflict course participant. In Figure 2.13 (p. 34) he illustrates how his NGO used the Pyramid to move on from analysis to build an inclusive strategy in Guatemala.

Context

In 1996, the Government and the Guatemalan National Revolutionary Unity (URNG) signed the last of the peace accords in Guatemala City. The signing of this agreement put an end to internal armed conflict, which had lasted for over three decades and cost at least 100,000

THE PYRAMID

WHAT IS IT?

▶ A graphic tool showing levels of stake-holders in a conflict.

PURPOSE

- ▶ To identify key actors, including leadership, at each level.
- ▶ To decide at which level you are currently working and how you might include other levels.
- ▶ To assess what types of approaches or actions are appropriate for work at each level.
- ▶ To consider ways to build links between levels.
- ▶ To identify potential allies at each level.

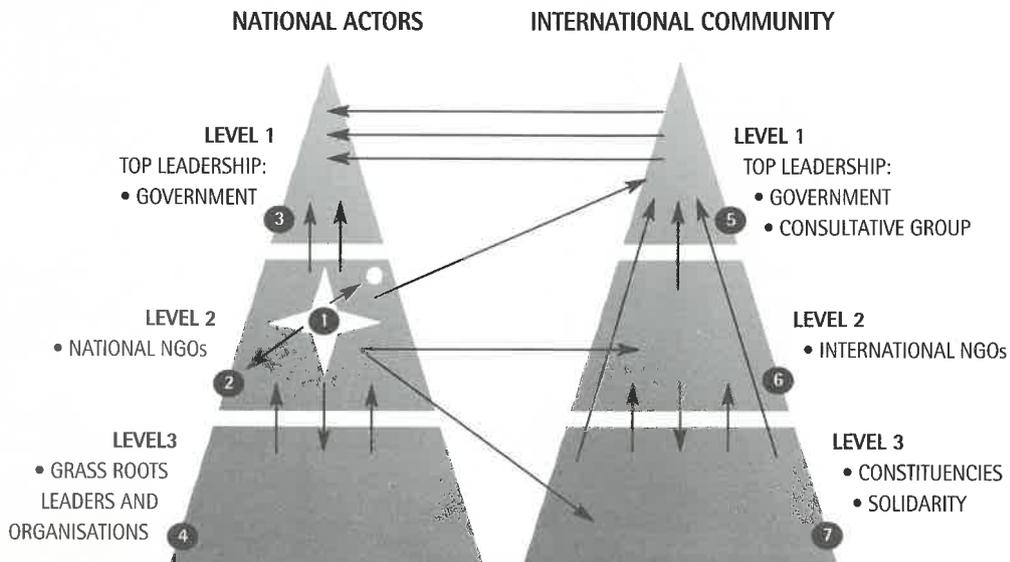
WHEN TO USE IT

- ▶ When analysing a situation that seems to include actors at various levels.
- ▶ When planning actions to address a multi-level conflict.
- ▶ When deciding where to focus one's energy.

VARIATIONS

- ▶ Use a triangle for each level (because each level has its own elite, middle and lower levels).
- ▶ Use with mapping to explore the different levels involved.

**FIGURE 2.13: THE PYRAMID
EXAMPLE FROM GUATEMALA**



KEY

1. Our position among middle-range leaders/NGOs at the national level.
2. Identification of our relations and capacity to have influence alongside other NGOs who were significant at the national level.
3. Relations, research, studies, follow-up, proposal and pressure on government offices, mainly with regard to international cooperation, fulfilment of joint agreements and follow-up on the use of funds meant for social compensation and foreign debt. The Guatemalan Government, finally, was the centre of pressure.
4. Accompaniment to promote socioeconomic development and to strengthen the organisational capacities of grass roots organisations through training workshops, informative talks, political analysis, assistance with addressing social needs and community problems, and so forth.
5. Monitoring and lobbying the international community – especially the Consultative Group (a group of governments and intergovernmental organisations who supported the peace process in Guatemala). Our main task was to provide information from the perspective of civil society sectors regarding progress in implementation of the accords as well as to give advice on the allocation of international cooperation funds. The international forum was also used by different civil society groups to highlight those policies which tend to increase poverty and the link between these and the demands of multilateral financial organisations.
6. Dialogue, alliances and coordination with international NGOs to make efforts and financial resources more effective. This encourages international NGOs to put pressure on their own governments, to influence their policies for aid and cooperation, and to inform and motivate their constituencies.
7. Constant information to solidarity groups in support of international NGOs regarding the definition of their aid and cooperation policies, and pressure on government officials about related topics.

lives. This agreement marked the beginning of a reconstruction and reconciliation process in the country, and laid the basis for transformation to

a more inclusive nation. These peace accords recognise that sustaining peace will require fundamental changes in society.

BUILDING A STRATEGY WITH CIVIL SOCIETY ACTORS – (SEE FIG. 2.13)

We focused our efforts mainly at the level of the actors and the decision-making process, taking as a point of reference the triangle (pyramid) of Actors and Peacebuilding proposed by John Paul Lederach. We focused on people who were in a position either to make or to influence key decisions. We created a triangle of national actors, and we invented another similar triangle by imagining the structure of the international community. From that point on, we began our outline of relations.

Luis R. Dávila

What we have covered and where we are going next

In this chapter we have offered the reader a range of tools and frameworks for analysing conflict situations:

- STAGES OF CONFLICT
- TIMELINES
- CONFLICT MAPPING
- THE ABC (ATTITUDE, BEHAVIOUR, CONTEXT) TRIANGLE
- THE ONION (OR THE DOUGHNUT)
- THE CONFLICT TREE
- FORCE-FIELD ANALYSIS
- PILLARS
- THE PYRAMID

As we have said, some of these have been adapted from other sources and some we have invented ourselves. All of them have been used, tested and sometimes modified by people from a wide range of different countries who are dealing with a variety of political and social conflicts.

They are not intended to be a rigid formula, but rather flexible and practical aids to help you in understanding the complexities of a particular situation in order to then build more effective strategies for addressing the conflicts you are concerned about.

We therefore encourage you to be creative in the way that you use these tools. They are often more effective when used in a variety of combinations – for example, applying an analysis of Stages with Mapping, ABC Triangles and a Pyramid – in order to explore from various perspectives different aspects of and factors in any given situation.

 *This kind of multi-dimensional analysis can help enhance your understanding of the situation and suggest a variety of entry points for action. Eventually, in Chapters 4 and 5, we will explore possible strategies for taking action. However, we want first, in Chapter 3, to address some of the critical issues that arise whenever any serious analysis is being made of human relations and the ensuing conflicts which can then occur.*

A MANUAL FOR UN MEDIATORS: ADVICE FROM UN REPRESENTATIVES AND ENVOYS

Compiled by Connie Peck from Interviews with UN Representatives and Envoys



unitar

United Nations Institute for Training and Research



Department of Political Affairs

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**The opinions expressed herein are those of the author and interviewees
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I. INTRODUCTION

This manual is a first step towards identifying mediation practices developed by the United Nations in carrying out its past mediation activities. It is based on the UNITAR Programme for Briefing and Debriefing Special and Personal Representatives of the Secretary-General, which involved extensive interviews with UN representatives and envoys to determine lessons learned and best practices from their work. This culminated in the UNITAR book (published for in-house UN use only) entitled, *On Being a Special Representative of the Secretary-General*. The current manual is based on this work and its main purpose is to familiarize new UN mediators with the range of skills used by their predecessors to carry out third-party mediation. As the reader will see, this advice comes from some of the UN's most experienced mediators whose names appear in the acknowledgements section at the end of this text. The manual also draws on the Report of the Secretary-General on enhancing mediation and its support activities (S/2009/189) of 8 April 2009, which the author was asked by the Mediation Support Unit to draft, with input from colleagues throughout the UN system.¹

The manual will first describe the current context in which UN mediation and “good offices” is carried out; then offer advice and lessons from previous representatives and envoys; and finally suggest how the UN's Mediation Support Unit can help to support the work of UN mediators.

II. THE CONTEXT OF UN MEDIATION TODAY

Within the UN context, mediation or “good offices” are carried out by the Secretary-General or by his representatives and envoys² – at the request of

¹ As the drafter of this report, I have taken the liberty of using extracts from the report in the text of this manual with the objective of further enhancing UN mediation practice.

² “The United Nations Secretary-General uses his ‘good offices’ when he meets with world leaders, either publicly or privately, in an effort to prevent international disputes from developing, escalating or spreading. The Secretary-General may also assign others to act as his envoys or representatives to perform the same function on his behalf. These acts of good offices range from direct mediation to merely passing a message to one of the parties.” (from un.org/peacemaker)

the parties, on the Secretary-General's initiative, or upon a request from the Security Council or the General Assembly. Of the various peaceful means for the settlement of disputes outlined in Article 33 of the UN Charter, the United Nations has played a mediation or good offices role in resolving many inter- and intra-state conflicts throughout the world. Such mediation efforts have been helpful at all stages of conflict: before it escalates into armed conflict (through preventive diplomacy); after the outbreak of violence (through peacemaking); during the implementation of peace agreements (through peacekeeping); and during peacebuilding efforts, that seek to lay the foundation for sustainable peace and development.

For mediation to be effective, the parties must accept a mediation role for the UN, allowing the UN mediator to meet with and listen to all relevant parties in order to help them find solutions that will resolve the conflict.

UN mediation offers several advantages. Based on its more than 60 years of work in this field, the United Nations has more institutional experience in mediation than any other organization. In addition, it has extensive expertise in the implementation of peace agreements through the deployment of multiple peacekeeping missions, as well as UN agency support for peacebuilding efforts. Although implementation of any mediated agreement rests upon the commitment of the parties, such support can provide powerful assistance and incentives to parties struggling to sustain their efforts during the many challenges that arise during the implementation and peacebuilding phases.

The United Nations, however, does not have a monopoly on mediation. "Resort to regional agencies or arrangements" is another option outlined in Article 33 of the Charter and Chapter VIII urges Member States to resolve "local" disputes through these arrangements. Indeed, since the end of the cold war, there has been an expansion in the number and kind of international actors engaged in mediation – ranging from regional and sub-regional organizations to States to non-governmental organizations.

In Africa, the African Union (AU) and African sub-regional organizations, such as the Economic Community of West African States, the Southern African Development Community, the Intergovernmental Authority on Development and the Economic Community of Central African States have been steadily gaining experience in mediation. Elsewhere, the European Union, the Organization for Security and Cooperation in Europe and the Commonwealth have been increasingly engaged in mediation efforts, and the Organization of American States, the Association of Southeast Asian Nations and the Pacific Islands Forum have quietly offered assistance in their own regions. The Commonwealth of Independent States, the League of Arab States and the Organization of the Islamic Conference also have undertaken or supported mediation efforts among their members, and a number of other organizations are also building capacity in this area. Following the UN's lead, a number of these are in the process of establishing dedicated mediation support units of their own.

A number of States also have become involved in offering mediation services, sometimes in their capitals and, in other situations, by providing envoys or representatives in the conflict area.

A small number of non-governmental organizations is also now involved in offering mediation, typically in situations that have been neglected by others. Some of the best known include the Carter Center, the Community of Sant'Egidio, the Centre for Humanitarian Dialogue and the Crisis Management Initiative. These organizations are frequently able to support peace processes in ways that the United Nations cannot, including through facilitating informal processes that can feed into official mediation efforts. UN mediators should be aware of and, when appropriate, take advantage of these options.

The evolution of new global, regional and sub-regional mediators, which may be independent of or dependent on each other, presents both opportunities and challenges for the UN mediator. If coordinated

properly by a designated lead actor, a mediation effort can benefit from the strengths of each organization by dividing responsibilities, distributing burdens, increasing leverage and isolating spoilers. Too often, however, the competition and confusion created by multiple, uncoordinated mediators hinder the mediation process, diffuse responsibility and, in the worst cases, could even exacerbate the crisis. Regrettably, agreed rules on how multiple mediators should work together do not yet exist, nor do codes of conduct or standards for accountability.

To begin addressing these challenges, the UN Department of Political Affairs is currently working with African counterparts to articulate the nature of the relationship between the UN, the AU and African sub-regional organizations, including by examining their respective roles and responsibilities. In some situations, UN mediation may have a comparative advantage; in others, the regional or sub-regional organization may be in the best position to take the lead. In yet other cases, sequenced interventions may be a more appropriate form of engagement. Given the importance of building synergy in such situations, it is incumbent on UN mediators to coordinate their approach and activities closely with their regional and sub-regional partners.

III. LESSONS FROM MEDIATION EXPERIENCE

The next section covers the range of lessons learned and best practices in mediation derived from the study of mediation practice and from a series of in-depth interviews with experienced UN mediators whose names are provided at the back of the manual. Direct quotes from the interviews are used to highlight important aspects of the mediation process. For a more detailed discussion of these issues, UN mediators should consult Chapters 2, 5, 8, 9, 10, 12 and 13 of the UNITAR book, *On Being a Special Representative of the Secretary-General*.

The Importance of Resolving Disputes/Conflicts in a Timely Manner

It has been well-established that the most propitious time to resolve a dispute is at an early stage, before it turns into violent conflict, when issues are fewer and more specific; parties more defined; positions less hardened; relationships less damaged; and emotions more contained.

When the threshold of armed conflict is crossed, a multitude of factors (caused by the violence itself) transforms the dynamic. With the loss of life and property, there tends to be a dramatic increase in grievance on all sides. The actions of each party are seen by the other as provocation requiring retaliation and both gains and losses reinforce escalation – in the first instance, because of the hope of prevailing; in the second, out of a sense of injustice and desire to even the score. As violent conflict is prolonged, issues expand and become more generalized. The number of parties proliferates, as new groups join the fray and existing groups split into factions. Conflicts tend to spread geographically as alliances are formed and cross-border flows of weapons, refugees and rebels cause the conflict to spill over into neighbouring states. In the worst cases, what began as a local conflict quickly engulfs surrounding countries or an entire sub-region. The rapid transformation of a peacetime economy into a war economy, based on arms trade, plunder of national resources, black markets, smuggling, and trafficking creates new incentives for belligerents that make war more profitable than peace.

Moreover, the longer a conflict persists, the more intractable it becomes, making its resolution ever more difficult; its impact on people, communities, institutions of state and the sub-region ever more devastating; and the cost of rebuilding ever more expensive. Thus, even when disputes turn into armed conflict, the sooner mediation is initiated, the better. However, as one envoy notes: “ ‘Too little, too late’ has been a major criticism of Security-Council mandates as well as the planning and deployment of UN operations. Such delay has greatly impeded effectiveness and sometimes resulted in

a situation deteriorating beyond the point where it can be pieced back together again. I always use the analogy that a conflict is like a broken pot: if you have four pieces, you can put it together again, but when it's broken into 100 pieces, it is much more difficult.”

The Usefulness of Skilled Third-Party Mediation

Self-perpetuating dynamics and the cycle of mutual grievance and desire for revenge make most conflicts very difficult to end. Persuading parties who have been involved in violent conflict to come to the negotiation table and engage in peace negotiations is, therefore, a major challenge.

Even when parties say they are ready to negotiate, most tend to view negotiation as a competitive, zero-sum bargaining process, rather than a cooperative, positive-sum problem-solving one. Many processes break down even before they begin, when one or more of the parties imposes unacceptable demands as pre-conditions for entering negotiations. Even when negotiations do get started, without a skilled third-party to guide the process, the parties tend to simply transform their power struggle from the military arena to the negotiation table and become entangled in adversarial debate that can result in a break-down before much is achieved.

In such cases, each party advances positions (its advocated solutions to *its* view of the problem) and each argues in favour of its own positions/solutions and against those of the other. In pursuit of winning at the bargaining table what they were unable to win on the battlefield, parties often employ a range of coercive tactics to attempt to force the other party to make concessions. These coercive tactics include: blame for past atrocities or injustices, recrimination, insults, threats, ultimatums and walk-outs. But, in fact, such tactics often backfire – causing the other side to react in kind and bringing the whole process to a standstill. The involvement of an acceptable, skilled third-party mediator can help to transform this adversarial approach into one of problem-solving.

A Problem-Solving Approach

In contrast to a traditional bargaining approach, a skilled third-party mediator can use a problem-solving approach (also called an interest-based approach) to engage in an analysis of the conflict before seeking a solution. This involves helping each party to better understand its own core interests/concerns, as well as those of the other party, so that they both can move away from entrenched positions to explore innovative options that might address their concerns and provide a tailored solution that can help reconcile their interests. New ideas are gradually introduced and, in some cases, international standards, practices and models examined. The more promising of these are refined by the mediator with feedback from the parties and gradually pieced together until a mutually-acceptable peace agreement is achieved that satisfies enough of the parties' core interests that they are willing to sign. Throughout the negotiations, the mediator helps to guide the process by ensuring that procedural rules are established and followed in order to create a constructive process and keep emotions under control.

The main features that distinguish this approach are:

- 1) an in-depth understanding by the mediator and the parties of each side's core interests/concerns which must be addressed to achieve a sustainable settlement;
- 2) the interposition of the mediator as an impartial third party – who, in effect, becomes the negotiating partner for each side – and who, through shuttle or proximity talks, probes interests and explores innovative options with both parties. This allows each party to have a constructive partner as its interlocutor and overcomes the difficulty of parties having to deal directly with those with whom they have a bitter adversarial relationship;

3) an exploration with the parties of innovative options for addressing key interests which move beyond each side's positions and identify new possibilities that may *not* have been considered before, but which might be gradually pieced together into mutually-acceptable agreements. These are built from ideas presented by the parties, the mediator, experts, NGOs and civil society or they may be derived from international standards, models and best practice. After a series of consultations with the parties, these ideas are gradually refined until agreement is ultimately reached;

4) the gradual building of confidence and the subsequent improvement of the atmosphere between the parties that comes from sequential successes in reaching agreement. Eventually this can provide the basis for the mediator to bring the parties into direct talks;

5) the encouragement and support of other influential actors (such as Groups of Friends) that can reward progress and nudge reluctant parties towards accommodation, agreement and gradual reconciliation.

One envoy explains the problem-solving, interest-based process as follows: "Going into any negotiation, a mediator is faced with positions, sometimes publicly stated by the parties to a conflict. A position is usually an artificial articulation of desires, set precisely for the purpose of negotiation. So, a mediator should make it his/her business – as quickly as possible – to try to find out what interests, concerns, fears, aspirations, dreams, and nightmares, led to setting those positions. If you can identify interests rather than positions, you're already a long way in the direction of finding the key to the solution of the conflict, especially if you do that with both sides."

"When you are dealing with an internal conflict, if you work solely with the positions as stated by the parties, it will be difficult to address the underlying causes of the conflict. It is only by identifying the underlying interests and the institutional problems that are frequently attached to them that you can go beyond a glorified cease-fire to build peace that will be durable because

you have identified the causes. You have to build the necessary institutions and avenues so that issues can be resolved in the future by peaceful means, rather than by resorting to arms.”

“Identifying underlying interests – going beyond positions – involves finding out the sources of grievance. Frequently, these may be exclusionary policies based upon exclusionary institutions. They may be economic, in order to entrench the interests of a certain sector of society; they may be simply for the preservation of the status quo; sometimes they are of an ethnic character. But these are the problems that have to be addressed.”

The Ripeness Issue

The term “ripeness” is sometimes used to refer to parties’ calculations of the cost-benefits of entering mediation versus continuing the conflict. As originally understood, conflicts were considered “ripe for resolution” when parties reached a “mutually-hurting stalemate”. Regrettably, this led some to conclude that the international community should wait for a “hurting stalemate” to develop before offering mediation; but this turned out to be costly for all concerned, since opportunities for early resolution were lost and a stalemate sometimes led, instead, to intractability. While a “hurting stalemate” may be one factor that leads to peace talks, other factors, such as a change in leadership or a change in the regional or geopolitical environment, can also do so. This concept has now been reformulated to take into account the role that third parties, such as the UN, can play in cultivating and fostering ripeness at an early stage through the introduction of new ideas, skills, resources, and creativity.

As one UN mediator argues: “From a moral point of view, there’s a lot to be said for UN involvement at an early stage. When the Organization becomes involved, it brings hope. It’s remarkable the hope that people have that the UN will eventually do the right thing. So, we should seek to persuade the parties to accept a modest role for the representative of the Secretary-

General as a facilitator or observer. In many cases, we need to be patient and wait for a window of opportunity to present itself; then, when it does occur, we need to move quickly, because windows rarely stay open for long.”

Confidence-Building Measures to Help Ripen a Situation

Confidence-building measures (CBMs) can also be used to help ripen a situation. CBMs are unilateral or bilateral positive gestures designed to improve the relationship/atmosphere between the parties. As one UN mediator states: “Confidence-building measures are indispensable for the peace process and they’ve been neglected for too long. What we had was a political process without preparing the societies on both sides for a political solution. They remained in a war mentality. So, what is necessary is to make certain gestures, to create confidence, particularly among the younger generation that did not go through the war, to prepare the ground for a political solution.”

To do this, the UN sponsored a series of Conferences on Confidence-Building Measures. “What came out of these conferences were agreements, signed by both sides – and by the mediators – recommending concrete measures for confidence building that covered the whole classical spectrum, beginning with the creation of a more favourable climate in the media; a mutual exchange of information and news; an exchange of journalists; internet access; data banks; and things like that. In the political field, the measures included bringing together political actors, parliamentarians, NGOs and university people. In the cultural field, it involved bringing together the directors of libraries. . . We also developed measures in the field of economic exchange, for example in the area of wineries.”

In another situation, when the parties were unwilling to consider confidence-building initiatives towards one another, the UN mediator asked that confidence-building measures be undertaken *as a gesture to the Secretary-*

General. He suggested a series of possible measures that were ultimately accepted and allowed negotiations to begin.

While confidence-building measures are typically considered to be something that the parties direct towards one another, it is also possible for the third party to build confidence through its own actions. In Guatemala, El Salvador and Nepal, for example, UN human rights monitors were deployed to build confidence during the peacemaking process. As one UN mediator notes, the establishment of human rights monitors in Guatemala created a sense that “the peace process was bringing something tangible for the parties. Yesterday, a colonel from the army could do anything and now there was an office of MINUGUA in the area, staffed with five police observers and five human rights monitors. That was a very important confidence-builder.”

Multi-track Diplomacy to Help Ripen a Situation

Multi-track diplomacy can also be used to help ripen a situation. As one envoy states: “Sometimes we can build internal pressure for a mediation process through Track II Diplomacy, which is a very important dimension of peacemaking where you bring people together from both sides – civil society groups, community elders, spiritual leaders, women and so on – so that they can air grievances, speak about the background of the problem and exchange views. Often the discussions are very tough, but if the people managing the discussion are capable of recognizing the common ground that emerges, bridges can be built.”

“In Ethiopia and Eritrea, we brought together the religious leaders of both countries – the patriarchs of the Orthodox church, the Catholic bishops, the Evangelical leaders, and the Moslem imams. They met in Norway in a remote place one hour north of Oslo, where they were totally isolated. In the beginning, they didn’t talk to each other; they only talked with their national compatriots – the Eritreans on one side and the Ethiopians on the other. We were amazed that even leaders of the same religion wouldn’t

talk to each other. They would just shake hands politely, but no more than that. So, we began the discussions. There were, of course, all kinds of bitter arguments and accusations. But, gradually, they were able to talk more reasonably. This process turned out to be very helpful for us in bringing the political leaders to talks. Religious leaders command great respect within the population and, when they went home, they were able to use that to influence the political leadership.”

Deciding on the Most Appropriate Mediator

Entry points for mediation vary. In some cases, parties seek assistance from the UN, a regional or sub-regional organization or another entity with which they have an association. In others, mediation is offered and parties are helped to understand its merits.

It is now widely acknowledged that, for mediation to be successful, it must be guided by a single lead actor. Multiple actors competing for a mediation role create an opportunity for forum shopping, as intermediaries are played off against one another. Such a fragmented international response reinforces fragmentation in the conflict and complicates resolution. As one UN envoy argues: “The worst enemy of mediation is the appearance of confusion as to who is the mediator. Mediators can easily be played off one against the other.” Careful consideration is, therefore, required as to who has the comparative advantage for the lead role. This is especially important since evidence suggests that failed mediation efforts further intractability, as options for resolution become discredited and parties come to doubt the utility of mediation, making the UN’s task, when it does become involved, more difficult. Thus, a key consideration in selecting the lead actor is who has the right combination of attributes, so that failed mediation attempts do not accumulate, making the conflict ever more difficult to resolve. Once a lead actor has been chosen, there is a need for other international actors to support the process in a coherent, well-coordinated manner. How

partnerships should be structured depends on the unique characteristics of each situation.

Once a decision has been made as to which organization is best to lead a given mediation process, it is also important to find the right person to act as the mediator. Mediation skill, experience and knowledge, as well as extensive political skill and judgement are essential. Relevant languages are important, as are personal characteristics suitable for the cultural context. An in-depth understanding of all aspects of the conflict is necessary (although this can be attained on the ground through rigorous consultation). Mediators should be perceived as trustworthy, impartial (while adhering to the principles of the Charter) and authoritative. Good listening and problem-solving skills are indispensable, as is the capacity to understand parties' motivations/concerns. The ability to communicate effectively and to give honest feedback is crucial, as are patience, persistence, creativity and willingness to take the initiative. Mediators should have a high tolerance for criticism and stress. Skill at handling the media and the ability to build a network of political and financial support for the process are also important, along with an understanding of the importance of working closely with the rest of the UN system so that a mediator's efforts are part of a broad approach to the country and region.

Selecting the Mediation Team

Mediators also require support from a highly skilled professional team that possesses similar skill sets to those listed above. Team members should be qualified to prepare background briefings and proposals; identify experts on key substantive issues; offer advice on legal matters; draft agreements; talk with parties (at the mediator's request); prepare logistics; and assist with a communication strategy and media relations. Women should be appropriately represented at decision-making levels. It is also useful to include specialized expertise in human rights, gender, child protection, refugees and IDPs, security arrangements, constitution-making, elections,

power-sharing, rule of law, transitional justice, and wealth-sharing, so that these issues are properly reflected in the agreement. If the agreement is to be implemented by a UN field presence, the team should consult with the Department of Political Affairs and, if a peacekeeping operation is to be involved, with the Department of Peacekeeping Operations, to ensure that the agreement is implementable. As the agreement is drafted, liaison with the Office of Legal Affairs and other relevant departments or agencies, such as the Office of the High Commissioner for Human Rights, ensures that the peace accords are legally correct and in compliance with UN principles and practice.

Choosing Who Should be Included in the Peace Process

Once a decision has been taken by the parties to engage in mediation, deciding whom to include in a mediation process and how to include them is fundamental. In general, most mediators and scholars urge that all parties who are stakeholders in a situation should be included in the peace process and warn that those left outside of it will have a greater motivation to act as spoilers and sabotage the process. As one envoy states: “It is important to look ahead and ensure that no major party that could wreck the agreement is left out.” As another puts it: “Leaving a warring party out of a negotiation is a recipe for failure.” Including extremists groups in a shaky political environment does, of course, present risks, so the mediator should be aware that he/she cannot accede to demands that are contrary to the principles of the UN.

One means of balancing such groups is to involve a broad-based group of widely-respected nationals, such as religious leaders, leaders of women’s groups, elders or scholars. By associating such persons with the peace process, it is more likely to be seen as a source of domestic empowerment. But since mediation becomes more complicated as the number of parties at the table expands, this poses a dilemma for the mediator. Innovative approaches and the use of best practices from other peace processes are

needed to ensure that civil society voices are fully heard and their concerns included in the process and reflected in the agreement.

Security Council Resolutions 1325 (2000), 1820 (2008) and 1889 (2009) call for an increase in the participation of women at decision-making levels in peace processes. In fact, most processes still involve only the male representatives of warring parties. The absence of women and the resultant failure of peace agreements to deal with women's issues leads, however, to perpetuation of discrimination against women, their continued marginalization in the post-conflict society, and de facto impunity for abuses such as sexual violence during conflict. Peace processes, therefore, need to ensure not only adequate representation of women as participants and observers, but also gender expertise in agenda setting, substantive talks and implementation, in order to redress past inequalities, so that new institutions can be built to provide greater social justice for all.

Some processes have been structured to include concentric circles of interested parties with the mediator and the warring parties in the inner circle, surrounded by civil society groups in the outer circles who bring pressure to bear on those at the table to consider the interests of the wider society in the ensuing peace agreement. One such innovative practice was instituted during the peace process in Guatemala, where an Assembly of Civil Society, composed of a wide range of Guatemalan civil society groups, was formed as a mechanism to accompany the peace process. The Assembly did not participate directly in mediation between the government and the guerrillas, but it did provide background texts for discussion by the parties and it had the right to review and express views on all agreements reached in the talks. Although its opinion was not binding, it did exert pressure on the parties to take into consideration a broader range of interests. "Nothing about us without us" has become the slogan for ensuring that peace processes find adequate methods for incorporating all stakeholders into the process.

Building a Good Working Relationship with the Parties

One of the first undertakings for mediators is to develop a working relationship with the leadership of the major parties to the conflict, as well as those who surround and influence the decision-making process. As one UN mediator explains: “You have to try to work with those who are the most influential on either side. It is often a mistake to seek contact with those who share your opinions because it’s easier to deal with them. If you do that, you end up with a deal that can’t be realized, because those you dealt with have no clout on their respective sides. So, you should try to deal with the leaders – or the direct representatives of the leaders. It’s important to influence the leaders through moderates and others, but try to have those who rule sit at the table – or at least send people who can make decisions.”

UN mediators also caution that advisers or aides do not always accurately convey the mediator’s messages to the leader. This emphasizes the importance of meeting directly with the leaders on a regular basis and, in some cases, meeting with the leaders without their advisers or aides present. Mediators need to have a personal relationship with the leaders themselves – to be able to listen to them and to be heard by them.

In the case of the leadership of a rebel movement, it is important to ensure that it remains unified and doesn’t break into factions, since the difficulty of resolving the conflict increases as the number of parties increases. In dealing directly with guerrilla leaders, UN mediators often attempt to discourage younger lieutenants from creating break-away factions.

The issue of dealing directly with leaders who have committed human rights abuses is often debated and tends to create friction between those working in the human rights field and those trying to bring about a peace settlement. The familiar argument levelled against establishing such contacts is that these individuals should be prosecuted for their crimes, not rewarded by recognition. Meeting with them, it is maintained by human rights advocates, legitimizes their leadership and gives them additional publicity, prestige

and even respectability. But most peacemakers argue that unless a peace process involves all major parties, it cannot be successful – and ultimately that is the only way to bring about an end to human rights abuses and institute a system of greater justice. Most peacemakers take the view that face-to-face discussions are essential to understanding the motivation of these leaders and the kinds of influence that might be effective in bringing about a change.

As one envoy puts it: “A mediator does not possess the convenience of selecting interlocutors and must deal with the prevalent incumbents.” Another comments: “You must take the leaders as they come. They are the product of their political, social and historical circumstances. It’s hard with some of them, who are disgraceful characters, but you have to listen in order to understand them. You can’t ignore them – whatever your private opinions.” Another envoy recalls that he felt it would be very difficult to shake hands with a particular leader of a guerrilla movement, having read of all the horrors that his group had committed, but he notes: “You have to forget this. Your purpose is very simple: You must consolidate and preserve the peace.”

The Importance of Careful Listening and the Need to Understand Parties’ Interests

One of the essential elements of relationship-building is, of course, listening to the parties in order to *understand how they see the situation*. Informal discussion aimed at understanding what the parties believe they have been fighting for (or against), how they see the situation and their aspirations/concerns is very important, since the very act of listening begins to establish a relationship between the conflicting parties and the mediator. As one envoy describes the process: “You have to do a lot of listening. When you listen, you create trust. Being listened to creates a psychological catharsis. People know when you have listened to the way they have expressed their positions, their nuances. It is important to take notes, to be fully appreciative

when people are speaking – and to ask questions – to go deeper into their thinking, into their views, into their apprehensions, into the way they came to these positions. I think that is absolutely fundamental.” With enough listening, one can begin to understand the complex nuances of parties’ perspectives. Engaging in this kind of in-depth discussion also allows the parties themselves to take stock of the situation and the possibilities for resolution.

The ability to understand parties’ interests and motivations also involves a particular kind of listening that includes trying to see the situation from the parties’ perspectives – *as they themselves see it*. This kind of empathetic listening deepens understanding for the mediator of what the key concerns are for each of the parties. One mediator explains it this way: “You must have empathy. You must be able to relate completely, totally and without reservation to each party’s agenda. You must understand what they want, why they want it and why they want it so much – and, to some extent, you have to want it so much too. It’s not easy. The parties may hold positions that you disagree with. They may do things that you disagree with. The history of the parties may be full of things that you disagree with. But you still have the duty to understand what lies behind this behaviour and to understand where all their mistrust and suspicion comes from.”

“To do this, you have to spend a great deal of time with them. It’s partly for psychological reasons: the more they see you, the more you are present, the more the peace settlement becomes part of their daily calculations. The other reason is that, if you are one hundred percent empathetic and constantly on the look-out for opportunities to achieve a peace settlement, it’s likely that the chemistry will work in favour of your understanding what the essential issues are for them. I spent days and nights talking and talking and talking with the two parties.”

Empathetic listening also engenders trust in the mediator, since parties can see that the mediator is trying to understand their concerns and is taking

these seriously. A number of mediators pointed out that listening does not involve judging. As one mediator put it: “When you’re listening, you can’t be arrogant. You can’t listen for ten minutes and say, ‘Oh, but that’s wrong. Why do you want that? You should want this instead.’ There has to be a measure of humility. You have to respect, even if you don’t agree with what they’ve done – you have to understand *why* they’ve done it. In French, we say, ‘*Entrer dans les vues de quelqu’un.*’ It doesn’t mean that you share their views – but that you understand them. You get into their shoes. You don’t have to stay there, but at least you know what it’s like. Doing that imposes the discipline of being simultaneously empathetic with contradictory views.”

Another envoy noted that, even when he knew the region, whenever he met with the parties, he would listen as if he were totally ignorant of the situation. “People want to know that you have received the message as they meant to send it. You can ask questions to make it clear that you have listened carefully or to clarify points that you didn’t quite understand. Then they are reassured that, when you go to see the other side, you will have a good knowledge of their interests. In other words, it’s a mistake to give them the impression that you already know their point of view or to try to dismiss it.” He suggests that one can build trust even by the way you report the *other* side’s concerns, by being objective and showing that you are going deeper into the root causes of the difficulties. “That’s how people understand that you are sincere and sensitive to their problems.” After listening, he then tries to reassure the parties by saying: “OK, I understand that we must work together to try to do something to make the situation less dangerous for you.”

However, as one UN mediator cautions: “What they tell you may not be exactly the truth. Sometimes they want you to be their propagandist, so you have to try to find out what is in the back of their heads. Once you have been able to do that, over time, you sort of develop sensors and you can even predict developments. For example, once the agreement was signed,

I already could tell which conditionalities the leader would implement immediately and which ones would take more time – until enough pressure was placed on him. So, it's playing by ear. Like a violinist, you must use your ears.”

The scholarly literature on this subject suggests that the most important and deep-seated interests that people are willing to fight and die for are their basic human needs. Threats to security for oneself and one's group; physical well-being for oneself and one's group; participation in decision-making that affects oneself and one's group; access to economic opportunity for oneself and one's group; and freedom of cultural expression (including the ability to use one's language, practise one's religion, etc.) are all major sources of grievance and must be addressed if conflicts are to be resolved.

In addition to talking to the parties, many mediators consult widely with a range of individuals and groups within the society, both official and unofficial. As well, reading and talking to other third parties who know the situation well can be very helpful. As an analogy, one mediator suggests: “in real estate, the secret is ‘location, location, location;’ in mediation it's ‘homework, homework, homework.’ ”

The Need for Reliable Interpretation

In some mediation situations, interpreters are required. In such cases, having the right kind of interpreter is very important. As one personal representative explains: “A translator is useful even when you speak the local language because it gives you the ability to maintain distance and correct what is said. Even if you speak the language fairly well, you are unlikely to have the subtlety sufficient to fine-tune your words to the point that you are sure they won't cause a misunderstanding or that you won't inadvertently make an offensive remark.” He goes on to say: “I cannot underline enough how important it is to choose the interpreter carefully. The selection and control of that person is vital. Ideally, the selection should

take into account the accent, because those whose mother tongue it is can immediately detect certain loyalties and linkages, as well as religious and ethnic background. Your interpreter is your face and voice. When you are having a private negotiation and you meet with a senior official, you need the translator to have the appropriate attitude of respect, including his or her dress code, because this is the person that your counterpart is going to look at more than you! If I speak slowly and carefully in order to stress a certain point or a certain word, his or her translation needs to be the same and not just monotonous or automatic. Summaries will not do. Translation must be sentence by sentence. Every word counts, every pause counts, every hesitation or hint of hesitation counts. That is essential.”

“I strongly recommend rehearsals since you can’t afford to make a mistake. Before every meeting, you should go through what you plan to say or how you might have to respond. You should explain the type of approach that you will be taking. For example, you might say, ‘At the beginning, I am going to be silent and make no comments. But at the same time, we need to be firm and make no excuses or apologies, not even courteous apologies, because we are here to protest.’ Then I ask my translator to practise with me. If it isn’t right, I say, ‘I didn’t hear any enthusiasm in your voice,’ or ‘I didn’t hear any assertiveness.’ Or I might say, ‘No, your tone has to be stronger and you have to look neutral because I am going to be neutral. I am not going to show emotion.’ You may need to go through it two or three times. That kind of thing has to be fine-tuned every time.”

Being an Honest Broker and Providing Honest Feedback

Mediators also advise that those in this role should strive to deal with the parties in an honest and fair manner. As one envoy notes: “It is important to tell the truth – the same truth – to all.” Another comments: “Be fair, be honest. Never try to trick anyone. Never say: ‘Listen, I’m on your side here.’ It sounds sanctimonious, but if you reach side-deals, or you express understanding, or wink or nudge and say, ‘Listen, we’ll settle for that; you

and I have an understanding,' it will only come back to haunt you, quite apart from blemishing your record. It's a cardinal rule, at least for me, that one should tell parties what the situation is, as it truly is, not as they would like to hear it. One should not try to varnish things. Certain truths are unpleasant, but a good negotiator will accustom the parties to the fact that frequently the news that they are going to hear is unpleasant."

It is also important to deal with tough issues. As one UN mediator recalls: "We always tried to combine being cordial and friendly with being principled in our stands and this is not easy. In most conflicts, all the parties have been involved in so many atrocities that they have blood not just on their hands but up to their elbows. You cannot come into a situation where the main purpose of your contact is becoming their friends and confidantes, only wining and dining and not bringing up issues. You have to be able to bring up the kidnappings, the atrocities, the lack of progress in the peace process, but without burning your relationship with them."

Perhaps paradoxically, such an honest broker role helps establish a relationship of confidence with the parties. Once parties know the mediator is being transparent, they tend to trust the mediator and be more likely to accept his/her advice.

Mediators should also ask for transparency from the parties in return. In some cases, mediators have made this an explicit agreement with the parties. In one situation, the mediator said to the leader of the guerrilla movement: "Let's establish a rule – we won't play games. I'm ready to understand your point of view, but tell me your *real* point of view, because if you start telling me stories, we'll waste a lot of time."

Mediators may also assist in the exchange of honest feedback between the parties, helping each to understand the interests of the other and improving the atmosphere by saying things like: "That's interesting – the other side is equally worried about that." Finding points of common interest can also be important for increasing understanding and communication between the

parties. Sometimes mediators have found it helpful to share what the other side's reactions are. One mediator called it "retelling without interpretation or prejudging." If there was emotion or hostility, he simply said, "There is strong feeling about this."

Maintaining Impartiality

UN mediators are expected to be impartial but not neutral, i.e., they should be constant advocates for the principles of the United Nations, as embodied in the Charter, the human rights conventions and the resolutions of the Security Council and other UN bodies. Within this context, UN mediators should be seen to apply these principles to all parties without favour, in order to earn their trust for the UN's role as an honest broker.

But the issue is not always so straight-forward. With monotonous regularity, UN mediators face the accusation of bias and the use of this accusation by the parties to try to manipulate the process towards some perceived advantage. One or both sides may accuse the mediator of being partial, in order to test or pressure the mediator. As one mediator stated: "You have to realize that accusations of bias are part of the jockeying for position that goes on in a peace process. You need to differentiate between genuine concern about bias and using an accusation to discredit the mediator or to try to score points. Accusations of bias are part of the game they play."

Impartiality can also be difficult for the mediator when one side is being obstructive to the process and when the mediator feels that he/she needs to point this out. As one mediator comments: "Impartiality is in the eye of the beholder: if you do what he wants, then you are impartial; if you do not, then you are biased and not to be trusted. There is a very fine line to be drawn by any mediator. The best test perhaps, is when one is attacked by both sides, and every mediator must accept the inevitability of becoming

an easy scapegoat, who will be blamed by either side when it suits it, regardless of the facts.”³

Conversely, it is also important to avoid parties implying that the mediator is on their side. If a mediator is praised by one of the parties for backing its policies, he/she may lose credibility with the other side. Keeping direct, privileged lines of communication open can help prevent this kind of problem.

Resisting Pressure

As stated above, inevitably, parties attempt to exert pressure on the mediator. In cases of principle, not bending to this pressure can be important and may even earn respect. The best response to pressure is to be direct and to explain that the mediator can be more useful to the parties by remaining objective – even if the mediator is not doing what the parties would like. One mediator’s response to pressure was to explain: “If I did what you are asking me to do, I would immediately be considered biased. I would be de-legitimized. My usefulness and effectiveness depends on my complete impartiality. By being objective, I am ultimately more useful to your agenda – even if I am not doing what you would like me to do right now. In other words, my integrity and objectivity are an insurance policy for your interests, because, one of these days, I could well turn out – through my objectivity – to be useful to you.”

Another suggests that putting problems and issues in writing can be helpful, including statements of fact and refutation of accusations made against the UN or the mediator.

³ M.J. Anstee, “The United Nations in Angola: Post-Bicesse Implementation,” in C.A. Crocker, F.O. Hampson and P. Aall (eds.) *Herding Cats: Multiparty Mediation in a Complex World* (Washington D.C.: United States Institute of Peace Press, 1999), pp. 609-610.

Building Trust in the Third Party

Listening to the parties, being an honest broker and providing honest feedback are part of the process of building trust in the mediator and the mediation process. “The parties must come to trust, if not like, the mediator,” says one envoy. “Trust means believing that the mediator will be impartial, professional and straightforward with each side and that the mediator is not going to lie or play games with them. Without telling each side what it wants to hear, the mediator has to assuage the fears of the two sides and, in particular, of the side that is more mistrustful.”

“Often in internal conflicts, the government is resistant to a visible UN role because they fear that international organizations will interfere in their internal affairs. So, you have to explain to the government that the involvement of the Secretary-General is a *service* that the UN offers to its members – it’s not outside interference. You have to make it very clear that the fact that the Secretary-General is involved does not mean that the Security Council will become involved.”

Developing a trusting relationship with the parties may involve considerable time. In addition to formal meetings with the two sides, mediators often make a point to call on the leaders in their offices, frequently without aides present. One envoy explains that he also met with the leaders informally, having breakfast with one of them who was an early riser and dinner with the other.

Recognizing and Dealing with Actors Behind the Scenes

Mediators are sometimes hindered by a lack of contact with the real power brokers and may not even know exactly who they are. In such cases, UN mediators have suggested that it is important to discover the identity of these individuals, although, in some instances, it may be unproductive to meet with them “because the fact that they are behind the scenes means that they won’t want to show their hands. . . So, it is best to simply be aware

of them, but to act as if they are not there and make those who are up-front accountable in your discussions.”

Some mediators have found ways to engage such behind-the-scene actors informally, in order to sound them out and to offer UN input to their attitudes and discourse. As one UN mediator recalls: “In Burundi, there are 35-40 families that we call ‘the Holy Families.’ They are the people who run the country. They are the people who, if they wanted to, could make a coup tomorrow. During the negotiations, although they never showed up, we knew they were advising everybody. So, we had to be in touch with them and try to persuade and convince each of them – because we knew that, in the night, they were holding their meetings, and we wanted to have the peace process perspective reflected in those meetings.” The mediator used his team members to make initial contact with these individuals and to explain the UN perspective and the benefits of supporting the peace process and the peace agreement. The team members would then suggest a dinner with the UN mediator, who would listen carefully to their concerns, try to alleviate them and explain the benefits of the peace process.” He adds: “You might only be able to persuade five out of ten people you talk to, but they will then become a kind of pipeline to the others.”

Agreeing on a Venue

Finding a venue for peace talks can be a highly contentious issue since the location itself can take on a symbolic meaning for the parties. As a result, a peace process can become stalemated even before it gets started by a dispute over where the talks should occur. “This is something you need to discuss at a fairly early stage,” concludes one mediator. “In an internal problem, the government will usually say, ‘The talks must be inside the country,’ but the opposition normally doesn’t want that because they feel that they would not be as free as their counterparts, either because they fear for their security or because they fear there will be listening devices. So, the mediator needs to say to the government, ‘Let’s not make a big issue of

that. The most important thing is for people to feel relaxed when they talk to one another.’ ”

In many cases, talks are held in a third country. In such cases, it is important not to choose a venue that is identified with either of the parties. Good communication facilities are also important, as is the consent of the host country, which, in some cases, may be asked to cover the local costs. Finally, it is crucial to select a country where the government will not interfere with the proceedings.

One mediator’s method for identifying such a venue is to start by asking each side separately where it is *not* willing to go. Thus, by the time he proposes a location, the selection has been narrowed down with both sides. In some situations, mediators have even resorted to holding talks on a ship off-shore, as the only neutral location to which the parties would agree.

Sometimes a suitable setting has to be created from scratch. In Cyprus, the UN mediator had to arrange a venue for the talks on short notice. The local head of UNOPS suggested that they use part of the old Nicosia International Airport which had been unused since the war of 1974. In five weeks, UNOPS recruited Greek and Turkish Cypriot workmen and worked on the building around the clock. On the date the talks were to begin, the smell of paint was still fresh, but there was a large conference room, a small conference room and a large sitting room where the UN mediator could huddle with the two leaders. There was an office for the mediator and offices for his core staff, all equipped with computers. The UN mediator designed the table in the shape of a U and the UN team sat at the base of the U while one delegation faced south and the other north.

Establishing a Framework for Negotiations

Once a decision has been taken to engage in a mediation process, full agreement on the structure and procedural rules of the process – often called a “framework agreement” – is an important step before commencing

substantive negotiations. Time and effort invested in this preparatory phase of peace talks are well spent, as far too many processes have faltered because of the lack of agreement on basic procedural issues.

Framework agreements normally include a clear statement regarding who the negotiating teams will be; who the mediator will be; his/her right to talk to any group deemed helpful; and details about how the mediation process will be conducted (through direct or indirect talks or both). It also normally commits the parties not to abandon the talks unilaterally and contains agreements on the venue, agenda, and timelines, as well as procedural rules for handling the media.

In El Salvador, the UN mediator carried out shuttle diplomacy over a period of eight weeks to work out a framework agreement in order to avoid the procedural wrangling that had bogged down previous efforts. Following agreement by both parties, The Framework Agreement for El Salvador was initialled in a plenary session and signed before the Secretary-General in a solemn ceremony designed to give sufficient weight to the undertaking.

Identifying Issues and Ordering an Agenda

In order to know what general topics will be the subject of negotiation, the mediator needs to bring the parties to agreement on an agenda of issues to be discussed. It can be important to explore the agenda even before a framework agreement is negotiated so that the two sides can have some idea about what they are going to negotiate. Sometimes, however, the agenda can be problematic because one side will want to include issues that the other does not want to discuss.

Mediators advise that it may help to express each agenda item in a neutral manner so that the item itself does not imply commitment to something that hasn't yet been negotiated. Rather than using, for example, "constitutional reform," the mediator might wish to phrase the issue as "constitutional issues." Instead of calling an agenda item "disarmament," he/she may wish

to reframe the issue as “a definitive end to hostilities” or “the future of the fighters.” The agenda should also address all of the important grievances on both sides so that the parties can see that their legitimate fears have been taken into account and formulated in such a way that they can be accepted by the other side – so that neither party will see any kind of provocation in the formulation.

The mediator should also consider making suggestions for issues to be considered, since the parties will seldom come up with certain issues, such as “human rights” or “verification.” The mediator may need to persuade the parties to put these on the agenda to strengthen the agreement and to satisfy the international community and future donors who might facilitate reconstruction assistance.

With regard to ordering the agenda, the mediator will need to clarify with the parties that the items are not necessarily sequential and that, although one item may be considered ahead of others, it does not mean that this item needs to be agreed upon before moving on to the next issue. One approach is to put the items that both sides want to discuss first, followed by the items that only one side wants to discuss. It’s often best to start out the negotiation with an issue upon which progress is likely, because that gives the negotiations “a sense of dynamism and the parties feel that negotiations are worthwhile. It also demonstrates to the public and to the international community that there is real progress.”

Finding the Best Balance Between Direct and Indirect Talks

When faced with the problem of structuring a negotiation process, mediators have two basic choices – to bring the parties face-to-face in direct talks or to meet with the parties separately in indirect talks. There are clear advantages and disadvantages to each approach and most mediators use a combination. Indirect talks tend to be either shuttle diplomacy or proximity talks. In the former, the mediator shuttles back and forth between

parties that are not in close physical proximity to one another. Shuttle talks, however, put considerable strain on the mediator, so many envoys prefer the option of proximity talks, where parties are located in the same locality (e.g., the same hotel or the same floor of the UN building) and the mediator can more easily move back and forth between them, with the option to bring them together easily, should that appear useful.

By contrast, plenary sessions, where the parties meet face-to-face tend to be confrontational (especially early in the process), as parties are tempted to rehash the past, restate and justify their positions and engage in tit-for-tat exchanges. As one mediator explains: “In face-to-face talks, the parties tend to speak for propaganda purposes, so they reiterate their well-known positions all the time for the sake of the other party. They love to remind the other side of what they did wrong and what their own position is. So you waste a lot of time.”

“It is also difficult in plenary sessions for the mediator to offer a proposal because the danger is that one party will accept it and the other will not – and then the mediator looks as if he/she is closer to one side. Further, if one party offers a worthwhile proposal, the other side is likely to object because it comes from the other. If the mediator later brings up these ideas, the other side will say that since these are my opponent’s ideas, the mediator has sided with the other party.”

Since mediators usually wish to assist parties in moving away from entrenched positions to explore innovative options, indirect talks are often more productive, at least in the early stages, until a greater level of mutual confidence is achieved through a series of successes. As one envoy explains: “Proximity talks are a device that requires a third party to conduct a negotiation in a situation where the parties to the conflict are not on speaking terms or where being confronted with one another may be counter-productive because the chemistry is bad.” In such cases, it may be preferable not to have specific proposals conveyed back and forth so

that the parties are not faced with counter-proposals. For this reason, many mediators are opposed to the parties exchanging proposals in writing, since the other side is likely to reject them out of hand and this can undercut worthwhile ideas that the mediator might be able to put to good use. Instead, mediators sometimes suggest that, if the parties have ideas, they should be given to the mediator and his/her team and the team can decide what to take from them. As one envoy comments: “In proximity talks, if the parties have a good idea, it is easier to use if that party gives it to the mediator to present – not as the idea of the opposing party, but as the mediator’s idea.”

As another mediator argues, “The major advantage of proximity talks is that you can replace something which is not a dialogue – that is, the two parties talking *at* each other – with something that *is* a real dialogue, which is the mediator talking to each of the parties separately.” With the latter approach, mutual trust is built as the parties come to see that they can agree on substantive issues and that the process is not a waste of time. “This prepares the ground for future face-to-face negotiations, where the two parties will be confident enough about the motivation of the other to engage directly with one another. In Guatemala, 80 percent of the work was done by discussing separately with each party what they wanted, whether another formula could be found, and whether what they wanted could be replaced by something else that they hadn’t thought of but that could be valuable to them.”

In some situations, however, the parties request a plenary session because they feel that they need to confront one another. When this occurs, the mediator can help guide the parties by asking, “What do you want out of this particular discussion?” If the mediator fears that the atmosphere will worsen as a result, he/she may caution the parties to delay or abandon the idea.

Indeed, some mediators use plenary sessions only when agreement has been worked out on an issue and they are bringing the parties together for the signing of an accord. As one envoy recalls, “When the parties were brought together, it was almost always because there was good news. That’s how you build confidence.”

Other mediation processes have, however, usefully employed formal plenary talks in conjunction with joint technical or working groups of experts who flush out more creative and detailed proposals for the consideration of those sitting at the table. This approach was used in the Cyprus negotiations in the lead-up to the referendum, where 12 working groups with up to 300 Greek and Turkish Cypriot lawyers and other experts worked constructively around the clock to produce the largest peace treaty ever developed.

Making Progress by Changing the Negotiating Format

Some mediators suggest that one way to overcome a stalemate is to change the negotiating format. Parties can interact in a variety of ways, in plenary with their advisers; in direct face-to-face negotiations; in more private fora with just the leadership of the two parties; or in one-to-one talks with just the leader or the spokesperson for the two parties. These interactions can take place in a formal setting or in an informal setting, through proximity talks or through correspondence. “So”, as one envoy explains, “if you multiply the type of interactions by the number of arrangements, you have a vast array of possible formats. When things are not moving, one tactic is to constantly change format in search of the easiest path. On the same day, I might go from a closed meeting with the two leaders, to a mid-sized meeting, to a large-sized one, and then come back to a mid-sized meeting. Sometimes by jumping from one format to another, you can build consensus. Using this variety of formats to advance your case with the core issues is an essential technique.”

Unravelling the Linkage Between Issues

Because issues in a negotiation are usually linked in complex ways, many experienced mediators adopt the rule of “nothing is decided until everything is decided,” meaning that, even when agreement has been reached on one agenda item, it is put on hold until agreements have been achieved on all agenda items, i.e., until a comprehensive peace agreement has been concluded. At that time, a commitment is made to implement the full set of agreements according to a schedule which is worked out and included in the comprehensive agreement.

The problem remains, however, of understanding the often complex linkages between issues so that these can be dealt with in a logical manner. In some cases, the linkages become clearer as the different agenda items are addressed. In such cases, mediators may need to work back and forth between issues in order to make progress. As one envoy describes the linkage of issues in the situation in Bougainville: “Having signed the Loloato Understanding on the Question of the Referendum, we had to work out the details of what an autonomous government would look like. The complexity of these details became increasingly apparent as the negotiations progressed. Without progress on autonomy, there was not going to be progress on the referendum; without progress on the referendum, there was not going to be progress on autonomy. So, we laboured along one month after the other.”

Balancing Asymmetrical Power Between Parties

Parties in conflict are seldom equal in power. Sometimes there is a strong government and a weak insurgency; in other cases, there may be a weak government and a strong insurgency. This asymmetry can lead to a dilemma because, if one side is stronger, the agreement may end up more favourable to that party.

As one special envoy cautions: “There is a tendency for mediators to appease the strong and put pressure on the weak, because it is easier. Pressuring the weak causes fewer problems for the mediator than putting pressure on the strong. However, applying pressure to the weaker party may well lead to an unjust solution to the problem. . . and if you end up with an outcome that’s not fair, that’s not just, you are not only cheating one of the parties, but this outcome probably won’t last very long. So, my advice is: avoid the tendency to appease the strong and lean on the weak.”

In such situations, mediators need to realize that there is no equidistance between the parties. “If one side has three cards in its hand and the other has fifty, you can’t very well say ‘If you give up three, the other side should give up three as well. That is, you can’t ask the two sides to make an equal number of concessions, because, if you do, you will soon deprive the weaker side of the few cards that it’s holding. Therefore, at least for a period, more concessions will have to come from the stronger side.”

When parties are unequal and when the weaker party has a valid case, the mediator may need to find ways to even the power balance. This has been done by building coalitions with civil society or international and national NGOs in order to strengthen public opinion in support of the peace process or by establishing Friends of the Secretary-General to help even the balance.

Another envoy suggests that, when dealing with the leaders of stronger parties, “One should always stress the effects of the continuing crisis on society: the destruction of institutions, of infrastructure and the resulting great hardship on the people. Leaders should be made to feel responsible for that. Sometimes it may even be important to tell them that, if they continue to behave in certain ways, they might one day be brought before an international court. The mediator also needs to help them see that, whatever short-term advantage they may have, it won’t last, because there are other factors that will come into play, such as how the people of the region feel, because they might be jeopardizing the interests of neighbouring

countries, or discriminating against a minority, which will create a reaction from a neighbouring country, and so on. One has to ‘relativize’ these things and help them see the long-term consequences of their actions.”

Mediators also typically advise that the parties should be given equal status in negotiations, with equal treatment in terms of arrangements and equal status in the peace process itself.

Introducing New Ideas

Mediators sometimes find it useful to introduce, on their own initiative, new ideas that neither party has previously considered. This can require considerable imagination. For example, the Ad Hoc Commission to Evaluate the Officer Corps of the Armed Forces in El Salvador was a proposal made by the mediator to overcome an impasse between the FMLN (which had called for the expulsion of a number of officers) and the Government (which opposed expulsions). Members of the Commission were appointed by the Secretary-General (in consultation with both sides) and tasked with evaluating the officer corps to determine which members might have to be transferred or which services should be eliminated because of human rights violations or because they were no longer deemed appropriate within the reformed armed forces that were to emerge from the peace agreement. This led to a fundamental change in the staff of the armed forces, as well as a major reduction in their numbers, including the dismantling of special battalions that had been created during the war years. The creation of the Commission on the Truth for El Salvador also developed out of a proposal made by the UN mediator.

Mediators may also gather new ideas from NGOs, academics, governments, or diplomats. In some cases, mediators have organized meetings of such individuals or organizations, as was done in the case of El Salvador, where the mediator brought together a group of independent human rights specialists, Salvadorans and personnel from the Centre for Human Rights

and asked: ‘What can be done?’ As the mediator recalls: “We even asked the hypothetical question: ‘If there were a human rights agreement between the parties, what should it address?’ Over the course of the two day conference, a number of very useful suggestions were made, many of which were used in the subsequent human rights agreement.”

Another mediator concludes: “If you, as the mediator, have an objective in mind in keeping with the Charter and the principles and objectives of the UN, my advice is: do not be afraid to make bold proposals and aim high; you may be amazed at what the parties will accept.”

Reframing

Sometimes reframing an issue or solution or simply altering terminology can lead to progress. As one UN mediator comments: “In the case of the referendum in East Timor, we did not call it a ‘referendum’ because, after years of opposing a referendum, Indonesia would have lost face if it had suddenly accepted one. We called it a ‘popular consultation.’ But the elements for the consultation and the method were exactly the same as a referendum: one person, one vote – with only the Timorese voting.”

As another envoy notes: “The same applied to the Historical Clarification Commission in Guatemala. We all sensed that the army had committed incredible atrocities in the previous 20 or 30 years and we felt strongly that it was important for Guatemalan society to know what these violations were, so they would not be repeated. We were surprised when we unexpectedly succeeded in getting the President of Guatemala to accept the idea, by changing the name from ‘the Truth Commission’ to ‘the Historical Clarification Commission’, thereby making it clear that it would not cover the particular period when he was President.”

Introducing International Norms, Standards and Models to Build Agreements

One important way to anchor agreements is for the mediator to introduce international norms and standards. In Guatemala, for example, the mediator brought in ILO staff to explain that the Indigenous and Tribal Peoples Convention mandated respect for indigenous rights as part of international law.

It may also be helpful to provide model solutions from other countries, such as various models of autonomy, federalism or power-sharing used by others to resolve their conflicts. In East Timor, the personal representative commissioned an expert on autonomy arrangements to provide models from other situations. “I gave the delegations two papers: the first one outlining the major features of various successful and unsuccessful arrangements that could have relevance to the East Timorese situation. The study featured nine cases: Bhutan and India; Hong Kong and China; Macao and China; Catalonia and Spain; Eritrea and Ethiopia; the Åland Islands and Finland; Puerto Rico and the US; the Federation of St. Kitts and Nevis; and the Autonomous Region in Muslim Mindanao. The second paper summarized the main elements drawn from these cases and, in submitting it, I emphasized that these were merely ‘food for thought’ and not meant to be ‘proposals’ in any sense.”

Finding Solutions that Satisfy Interests

It is self-evident that parties are more likely to accept proposals that address their core interests. The agreement for policing in Bougainville, as described by the UN mediator, illustrates the point: “The sensitivities with regard to the police were great, because, while the war was prosecuted mostly by the Papua New Guinea Defense Forces, the PNG police were living in Bougainvillean communities on a day-to-day basis. According to the Bougainvilleans, the police were guilty of more atrocities than the defense

forces. For the National Government, the police were seen as an institution that they wanted to maintain without dividing it between Port Moresby and Bougainville. But the Bougainvilleans were not ready to tolerate an arrangement allowing the same kind of police presence as before, in an autonomous Bougainville. So, the agreement was that Bougainville would have its own police force. It would have its own head who would not be called a commissioner; they agreed to find another title. He would be appointed by a commission that would include Bougainvilleans, as well as the Commissioner of Police in Port Moresby. The standards of policing would be the same for both and the arrangement would be such that the police could move freely between Bougainville and Port Moresby. It would be one force, in the sense, that there would be consultation and cooperation between the police in both places. This was a clever and very creative solution that met the concerns of the Government on the one hand, that the institution of the police be seen as one, and not fractured, and the concerns of the Bougainvilleans on the other, that the police arrangements would not be a constant reminder of the atrocities they suffered at the hands of the police during the crisis. With that agreement, we took another giant step towards the conclusion of the agreement on autonomy.”

Using a Single Negotiating Text

UN mediators often find it helpful to employ a single negotiating text. After sufficient exploration and probing of interests and options, mediators introduce a single negotiating text to both parties who are invited to suggest changes. Following further discussion to clarify concerns, the mediator then revises the draft and again presents it for comment, until, in an iterative manner, the text evolves into something that all sides can accept. Ample time is required to ensure that the parties feel a sense of ownership over the process and the outcome. Although, as mentioned earlier, separate accords may be reached on various agenda items, most mediators adopt the rule

of “nothing is agreed until everything is agreed” in order to ensure that latitude for trade-offs on priority issues remains throughout the process.

One mediator explains: “I always built the text from four sources: 1) the interests of party A; 2) the interests of party B; 3) the interests of the Assembly of Civil Society; and 4) expressions of international legitimacy and best practices. So, for example, if the issue was fiscal reform, I would get one party’s vision, the other party’s vision, civil society’s vision, and basically what the World Bank and IMF could teach us on this. Once you have that, you more or less have your final product. But, I didn’t try to sell it to the parties, because the worst mistake you can make is to try to sell the parties something for which they have developed no sense of ownership. You have to walk them from where they are to the final product.” In some cases, when the parties are close to agreement, the mediator may consider doing the final drafting in a trilateral meeting, with the two parties and the mediator working together on the text.

Using Friends of the Secretary-General

Member States of the UN can also play a role in supporting mediation, as Friends of the Secretary-General or Friends of the Process. At the request of the UN mediator, they can do many useful things, including: hosting rounds of talks; encouraging parties to be creative and flexible in finding innovative solutions that address parties’ core interests; reinforcing progress; providing new ideas, financial assistance and technical expertise; helping to “level the playing field” when the parties’ power is asymmetrical; showing international support for agreements by being present at signing ceremonies; and providing resources for implementation. Experience suggests that the selection of Friends is best undertaken by the mediator and that it is wise to keep the number of Friends small and manageable. Friends need to be trusted by the parties and should possess good political instincts, creativity, and support the mediator’s agenda. It is also best if they have experience in the country and can provide credible advocacy for

the process and for the agreement – with leaders, constituents, and the international community. Finally, it is important that Friends believe that peace is possible and are willing to stay the course.

Eschewing Artificial Deadlines

Most mediators caution against setting deadlines. As one mediator puts it: “Let the mediator beware of conjuring up deadlines not anchored in reality. Calls to settle by a given date ‘or else’ frequently put the mediator’s credibility at risk and devalue the coin.” Sometimes, however, a deadline may occur naturally. In this case, such “real deadlines” – those that are not in the power of the mediator or the parties to change – can and should be seized by a mediator to foster progress in a negotiation.

One natural deadline occurred when Secretary-General Perez de Cuellar was leaving office at midnight on 31 December 1991. The full high command of the FMLN and President Cristiani were in New York with the Secretary-General and the UN mediator in last-ditch negotiations. After the Government of El Salvador consulted and was advised by the incoming Secretary-General-elect that they should finalize a deal under Perez de Cuellar, the parties finally reached agreement a little after midnight.

Using Influence/Leverage Wisely

Leverage can be useful in mediation, but only if exercised in a way that advances the process rather than being counter-productive. The key to effective leverage is understanding the parties’ interests and providing incentives that address their aspirations and concerns. Involving parties as partners in a mutual exploration of incentives increases the chance of success and leads to a greater sense of ownership and increased likelihood that they will accept responsibility for necessary changes. Essentially, the better one understands the parties’ motivations, the more likely one is to be able to influence the process. One special representative sums it up this

way: “It is useless to ask people to do things that you know they will never do because they are not consistent with their interests!”

In the UN mediation context, the most effective leverage is often the mediator’s relationship with the parties, his/her moral persuasion, and intangible incentives, such as recognition, assistance or the conferral of legitimacy. Early engagement with the UN system and donor community has also proven to be a powerful source of leverage, enabling parties to see the benefits of working towards agreement. Pledging conferences, following the signing of peace accords, have also offered tangible incentives.

Evidence suggests that the blunt, simplistic use of externally-imposed leverage often causes resistance and backfires, especially when parties believe that conceding to such pressure threatens important values, such as their sense of identity, honour, or commitment to a goal, or creates loss of face with constituents.

Although UN mediators do not themselves employ disincentives, other international actors sometimes do (e.g., through targeted sanctions, arms embargoes, or other restrictions). In such instances, mediators can help parties weigh up their options and consider how to avoid incurring such costs.

Dealing with Spoilers

Experience has demonstrated that one of the greatest risks to mediation comes from parties who believe that peace could threaten their interests and who then use violence to undermine the process. This is *particularly* likely when talks are making progress or when agreement is near, since internal divisions (between moderates and hardliners) within rebel movements or governments become more pronounced and lead to hard-line break-away factions that are opposed to the process.

As one envoy elaborates: “One should never underestimate the enemies of peace. In Colombia, as in Northern Ireland and the Middle East, they are very strong. Whenever there is progress, there are para-military groups, terrorist groups or fundamentalist groups who start a terror campaign. In Colombia, every time there seemed to be progress in the talks with either the FARC or the ELN, the para-military groups stepped up their terror campaign in order to make progress impossible between their enemy and the state. Internal divisions within the guerrilla movement or within the Government, also tend to become much stronger when a compromise is close – something that should also not be underestimated. I would say never underestimate how easy it is for a few men with a few guns to blow away everything you’ve carefully built over a long period. In the Middle East, nobody expected the kind of terror that we now have on both sides. A few suicide bombers can do a lot of harm! So, make contingency plans for violence. One has to prepare for the worst – but not be deterred.”

Careful assessment of spoilers’ motivations is required for the mediator to respond appropriately. As one special representative explains: “When you see people obstructing the process, you must ask yourself, ‘Alright, they’re obstructing, but *why?*’ Once you identify all the reasons, then you can ask: ‘Which of these things are under my control? Where can I have influence? What can I do to stop it?’ ”

Another SRSG points out that: “It’s important to ask what the motives are that cause parties to position themselves as they do. The real motive is often an internal power game – usually for the maintenance of power.”

A number of strategies have been devised for dealing with spoilers. In some cases, they can be re-engaged in the process by addressing their concerns (e.g., responding to their security fears with guarantees and reassurances). As one special representative comments: “Spoiler behaviour can be an expression of valid concern by the losers. When this is the case, there is a

need to address these things and to transform fear and a lack of trust into trust and confidence.”

Another envoy adds: “The hardliners, of course, have their reasons. My advice is to talk to them. On a regular basis, I talked to the hardliners in the army, as well as the hardliners in the URNG militancy. I suggest that you approach them in the same way you approach the others – with empathy, single-mindedness and hard work. You have to empathize with them in order to understand them. Sometimes they have very good reasons for their positions. Some have seen their entire families killed, and they themselves have been tortured. That’s why they’re hardliners and can’t agree to negotiation – and that’s a very valid point! Others have such a deep distrust of the land-holders that they believe there can never be a negotiated solution and that’s understandable too. So, the problem is not so much to challenge their hard line, because it may be perfectly valid – but to challenge them to consider the alternatives.”

Similarly, a third envoy advises: “You’ve got to be sensitive and listen in order to understand what the conflict is about. Once I got to know a guerrilla commander, sub-commander or assistant, I would always ask him, ‘Why did you join?’ In almost every case, the guy’s family had been massacred or everybody in his village had been massacred; the members of his trade union had been massacred; his schoolmates had been massacred; his land had been stolen; the women in his family had been raped. There was always a bleeding wound there. They were angry and felt that there would be no justice unless they became hard line and killed until it ended – even though, of course, the killing really just perpetuated it. But you need to get to that wounded part, if you’re going to move on. On the Government side, they would say, ‘My uncle was kidnapped; they burned down my farm.’ It was the same, sad story.”

Another envoy describes how he tried to reason with the hardliners in Bougainville: “As Chairman of the negotiations, I could not ignore the

hardliners. Quite the contrary, I felt an obligation to give them special attention and to encourage them to stay in the process. My basic plea was: ‘You tried war for ten years; now you must give negotiations a chance to work. You can’t give up after just one year.’ In the course of the negotiations, I had about eight sessions with them, each lasting three or four hours. I would send the helicopter to bring them to our headquarters, where we would begin with an extremely pleasant lunch, during which it was as if we were all members of the same family. For those who were smokers, cigars were provided. Following lunch, we would repair downstairs to the conference room. We would begin with a prayer, after which I would urge their continuing support for the negotiation process – and the conviviality of the exchange over lunch would quickly disappear. They were respectful, but forceful and tough. . . They wanted to make it clear that, if they felt the negotiations were not going anywhere, they were not going to make my life easy. They threatened that, if the National Government did not negotiate in good faith or if there were delays, they would start fighting again. They threatened that they would make a unilateral declaration of independence. These exchanges continued over several months. As the negotiations progressed, little by little the hardliners were persuaded to stay with the process. . . Throughout all of this, I had to keep smoothing ruffled feathers on both sides, to keep nursing and cajoling and pressuring them individually, as well as by group – the National Government on one side, the Bougainvilleans on the other – including the hardliners. Every little bit helped.”

In other cases, the “departing train strategy” – where the mediator asserts that the process will go forward regardless of whether a party joins or not – has been used. When peace is achieved, the party that has excluded itself may change its analysis as the advantages of participation become clearer. This strategy was used in Cambodia when the Khmer Rouge opted out of the process and the special representative carried on with the elections as planned. It was subsequently used in Burundi, where most of the rebel

groups signed the Arusha Accords but a few did not. Ultimately, the benefits of being inside the process became obvious and led to the signing of the agreement by the remaining groups.

One important word of caution: threats to withdraw international support for a process being sabotaged by spoilers have been shown to be extremely dangerous (as exemplified by Rwanda). This gives spoilers veto power over the process and exactly what they want, which is the withdrawal of the international community. Such a response by the international community also marginalizes and endangers the moderates.

In extreme cases, threats of coercion or actual coercion by the international community have resulted in spoilers coming to the table. But disincentives have not always been as effective as expected, as parties often value their resistance to coercion more than they do the losses they will suffer.

Some spoilers, of course, are motivated by the benefit derived from a war economy. The profits earned by black marketeers, drug lords, smugglers, traffickers, and government or guerrilla commanders cannot be underestimated. The power and status derived from being a wartime leader are obviously more attractive than the prospect of being sent to The Hague. Previous UN reports have noted that spoilers have the greatest incentive to defect from peace processes when they have independent sources of income to pay soldiers, buy weapons, and enrich themselves. Where income from the export of narcotics or valuable commodities cannot be stopped, peace is less likely. Although civil wars often begin with the aim of taking over, retaining control of, or seceding from a State, many quickly mutate into wars where economic incentives come to the fore. In such situations, the problem is not simply the breakdown of the previous system but the emergence of a new system of power, profit and protection. This underscores the importance of early action to mount skilled, well-designed and well-resourced efforts to resolve disputes/conflicts before their reach extends into the murky world of transnational crime.

The role of international actors, including the Security Council and individual Member States, has been crucial in controlling spoilers. Where there has been coherent international action to support a peace process and deal with spoiler behaviour, the situation has been managed; where this coherence has not been present, spoilers have succeeded in derailing the process at great cost. For example, failure of the Arusha and Bicesse Accords, due to the action of spoilers, led to the death of an estimated three million people. External actors must also be dissuaded from supporting spoilers with weapons, money and sanctuary.

Achieving Peace Agreements that Facilitate Implementation

Experience has shown that peace agreements must satisfy certain criteria to withstand the stress of implementation. “When you negotiate a peace agreement,” explains one envoy, “it’s important to have in mind that the agreement itself is not enough. You have to make sure that you have an agreement that can withstand the test of implementation. All processes of implementation teach us lessons as to what an agreement should contain.”

We have also learned that, when the UN is expected to have an implementation role, it should be the one that brokers the agreement or, at the very least, the UN should have sufficient input into framing the agreement to ensure that it is, indeed, implementable. Agreements that are more complete are easier to implement since more of the issues in contention have been decided, leaving less to be negotiated during implementation. As one special representative argues: “Lack of specificity in a peace agreement is a recipe for endless disputes during the implementation phase. In such cases, it is difficult, if not impossible, to reach consensus and the process suffers endless delays. The additional time required in the negotiation phase to make a peace agreement more specific is largely compensated for by gains in the implementation phase and creates a solid base for the success of a peacekeeping operation.”

Another envoy adds: “If an agreement is not structured in such a way that it addresses all the concerns and grievances that led to the outbreak of fighting in the first place, the job is really incomplete.” Yet another concludes that: “To be effective, a peace agreement has to deal with the causes of conflict. It either has to address them directly or establish a new system and institutions that will enable these causes to be dealt with over time.”

Of critical importance is finding a model for power-sharing that fits the unique characteristics of the situation. Post-conflict electoral systems are best designed to provide for broad and inclusive representation and avoid dominance by single parties or elements of society, so that losers do not have an incentive to take up arms again. As one scholar writes: “A good agreement is one that contains power-sharing provisions for winners and losers in the aftermath of elections. The context in which elections take place is crucial to the peace process. There need to be positions for both winners and losers in a new government. . . Unless there is some form of compensation, the loser will have strong incentives to take up arms and return to a renewed campaign of violence in pursuit of political objectives. Electoral mechanisms, such as proportional representation may also be required so that minorities feel they have adequate representation in parliament.”⁴

Agreements must also respect international standards. The Mediation Support Unit of the Department of Political Affairs has prepared a series of Operational Guidance Notes based on existing UN policies, guidelines and standards to help mediators and their teams think through the most important process and thematic issues. These can be found on www.un.org/peacemaker.

Viable agreements also need to be acceptable to the majority of constituents. While mediators and parties understandably seek to maintain

⁴ F.O. Hampson, *Nurturing Peace: Why Peace Settlements Succeed or Fail* (Washington D.C.: United States Institute of Peace Press, 1996), p. 218.

confidentiality with regard to the internal dynamics of the mediation process, a communications strategy remains important as the talks continue, in order to establish appropriate expectations and to prepare the public for the outcome. Once an agreement is signed, a more robust media campaign is needed to inform the population of the opportunity for constructive change and to engage them in active participation in reconstruction.

The most effective peace agreements have been those with clear guidelines about implementation priorities and realistic timetables. As one envoy puts it: “An agreement that produces commitments to action is of little use unless it also spells out by when they must be completed and how they interlock with one another, because usually they involve reciprocal concessions. Therefore, it becomes extremely important for the United Nations to think through the steps that need to be taken, so as to carry out the agreements reached. For example, if the demobilization of guerrillas is contingent upon their receiving – immediately upon hand-over of their weapons – some sort of financial assistance, you had better be sure that you know if and when that assistance can and will be delivered.”

Having a strong dispute resolution mechanism, as part of the structure that will monitor implementation and prevent or resolve crises, is also critical to outcome. Careful attention should be given to the composition of this structure, including selection of the most appropriate local and international actors. To ensure that such structures are effective, there is often a need to develop the capacities of those involved for collaborative leadership, consensus building and constructive negotiation. As one envoy explains: “A strong political structure should be established to manage the peace process. While the government should continue its normal activity, the political structure should drive and monitor the entire process, prevent crises or solve them when they erupt. The existence of such a structure is essential to the confidence-building process.”

Close cooperation between the mediator and the resident coordinator/country team can also be essential to ensuring the sustainability of the agreement.

The Special Issue of Accommodating Peace and Justice

When conflicts lead to gross violations of human rights and international humanitarian law, peace and justice are indivisible. In practice, addressing both can sometimes be a challenge for mediators, parties, civil society, and the international community. The cultural context and the wider normative standards/practices of the UN must be taken into account. To ensure that transitional justice issues are adequately covered in the agreement, mediators should rely on the expertise developed within the UN system and by relevant external experts. Widespread national consultation with civil society groups (including victims) is also vital, particularly where their perspectives are not represented by the negotiating parties.

Some important normative boundaries for UN mediators with regard to justice issues are detailed in guidelines developed by the Department of Political Affairs. When parties seek to condition their participation in the peace process on demands for amnesty, UN mediators should adhere to these guidelines and consult with other relevant partners at Headquarters, including the Office of the High Commissioner for Human Rights.

Where serious crimes have been committed and are under investigation by the ICC, pursuing international justice during mediation can generate considerable tension, since those being investigated or those indicted may cease cooperation and actively obstruct the process. Ignoring the administration of justice, however, leads to a culture of impunity that will undermine sustainable peace. Mediators should make the international legal obligations clear to the parties and parties should understand that, once ICC jurisdiction is established, it is essential that the Court rules on matters before it and that its independence is preserved.

Settling for a Less than Perfect Deal

One mediator argues that parties need to be helped to understand that they cannot obtain everything to which they aspire. He suggests that “at the time of the signature of a peace agreement, they should simply believe that this is the best solution they could have achieved.” “A peace agreement is always controversial,” agrees another envoy. “Leaders must come to realize that by accepting a practical, although less than perfect deal, they might lose in public opinion, but history will show them to be the heroes of peace who took the courageous decisions.”

Establishing Public Commitment

Public signing of peace agreements can provide a significant finale to years of negotiation and may also help to establish a public commitment to peace. One envoy notes that: “As part of generating support for an ongoing peace process, ceremonies can be very important. In El Salvador, it was decided to make a big affair of the signature of the accord proper. Mexico had been a prominent member of the Contadora Group and they set great store by the El Salvador peace agreement. So, they decided to hold the signing ceremony in Chapultepec Castle, overlooking Mexico City. There, you had ten Heads of Government, including the Heads of Government of all the Central American countries, as well as President Cristiani of El Salvador, plus the Heads of Government of the Friends of the Secretary-General and the Secretary-General of the United Nations. We had our delegation present, as well as the delegations of the two sides and many, many guests. This was televised and repeated all day. The first line of Boutros-Ghali’s speech was: ‘The long night of El Salvador is drawing to an end.’ It was a major ceremony, since until that point, President Cristiani had refused to meet face-to-face with the guerrillas. Cristiani’s speech was remarkable because, in that speech, he admitted that, until then, El Salvador was not a country that had the characteristics of a democracy in which the type of conflict that was coming to an end could be resolved peacefully. After initialling the

agreement himself, he came down from the table, where he was together with his other colleagues and shook the hands or embraced each of the guerrilla delegation members, one-on-one. I was actually the first person whose hand he shook – and he had tears in his eyes.”

The Need for Patience and Persistence

Most mediators argue that patience and persistence on the part of the mediator are essential. As one states: “There’s a morally challenging trade-off between the quality of an agreement and the time you devote to it. You may sometimes be able to reach a very quick agreement and, of course, that means that you will spare lives. . . There are, of course, all kinds of very valid reasons why you want to rush the parties into something that allows the end of the war. But at the same time, if an agreement is what it has to be to survive – if it is good, legitimate, politically accurate, based on a great deal of mutual confidence and has addressed all major issues – that will require time. It means, first, that the mediator must spend a great deal of time with the parties; it also means that the leaderships will have to spend considerable time with their constituents.”

Another envoy adds that: “Mediators should be careful not to aim for too much at the beginning. Even if there’s a feeling that it is possible to move faster, one has to go step-by-step, letting the parties themselves feel that there are other steps that can be made. You can say, ‘When we meet next time we will address that,’ because at each stage, the parties have to go back and convince their constituents and they need time to do that. It’s only when you’ve made a number of steps that you might feel that you can speed up a little. However, even then, one has to be careful. I’ve been witness to a number of situations where we were close to the end, but because we wanted to finish too quickly, we jeopardized the whole process. So, even towards the end, it’s best not to rush things so you can be sure that you’re really bringing the parties along.” Another representative sums it up

this way: “Quick fixes have a way of coming back to haunt the fixed as well as the fixers.”

Finally, as one special representative comments: “You must have a positive approach. You must realize that to do what is possible is very easy. Anybody can do that. What is difficult is to *make* things possible – in other words, to make utopias become reality. This is what makes things move in history.”

“If you look at things that seem completely impossible, and you say, ‘OK, this cannot be done,’ then realism is a very strong enemy. You must have dreams. You need a little bit of utopia in your mind. You must accept that things can be *made* possible, and to the extent that you really want them and you’re ready to take risks for them, then *you can achieve results!*”

IV. SERVICES AND RESOURCES AVAILABLE TO UN MEDIATORS

This section will describe how the Mediation Support Unit, established in 2005 and located in the Department of Political Affairs, is available to provide support and resources for good offices and mediation. The Unit now operates as the focal point of United Nations Headquarters for mediation support and the institutional repository of knowledge, lessons learned and best practices. The Unit currently employs 12 professional staff who have worked in the field in peace processes and who are based in New York. They provide first-line operational support; planning and coordination; evaluations; and mediation capacity building and training. This is augmented by a seven-person Standby Team of Mediation Support Experts which can be deployed rapidly to the field for short periods of time (as described in greater detail below). The Unit also manages a small roster of mediators and other thematic advisers who can be deployed for longer periods.⁵

⁵ For further information, please contact Kelvin Ong, Head of the MSU at ongk@un.org

The Mediation Support Unit offers UN mediators and their teams a full range of mediation support services in three main areas which are outlined below. Examples of such support are shown in Table 1.

Technical and analytical support: The MSU provides support for peace processes throughout the planning, implementation and evaluation phases of a mediation process. Available services include: modest mediation start-up funding; strategy development and process design for mediation, facilitation and dialogue initiatives; and advice on thematic issues.

The MSU is also home to the seven-member Standby Team of Mediation Experts who are experienced in mediation situations and experts in a range of topics that arise frequently in mediation, including: security arrangements (ceasefires; disarmament, demobilization and rehabilitation; security sector reform), constitutional processes, power-sharing, natural resources and gender issues. Team members can be deployed within 72 hours and are available, upon request, to provide technical advice to current United Nations envoys, political and peacekeeping missions and country teams, as well as to regional organizations with whom the United Nations works closely. Team members can be deployed to the field in any configuration: as individuals, as a small group, or as the entire team. In some cases, they can also provide advice remotely.

This support is flexible and can be adapted to the needs of the situation and could include, for example: providing advice on procedural and agenda-setting issues; analysis of the interests of parties in negotiation (including the identification of potential points of convergence); leading workshops for parties on substantive or process issues; general technical assistance; and drafting of the text of peace agreements. When not deployed in the field, the members of the Standby Team carry out research and coordinate reviews of best practices in their areas of expertise.

Requests for deployment or assistance of the Standby Team or any one of its members should be directed to the Under-Secretary-General for Political

Affairs, and to the Mediation Support Unit of DPA. The request should be made in writing or by e-mail and should come from the head of mission, head of appropriate department, special envoy, resident coordinator or other appropriate senior official.

For longer-term deployments, the MSU also maintains a Mediation Roster, which is a database of senior mediators, operational-level mediation support staff and thematic experts.

Capacity Building: The MSU provides tailor-made training for mediators and their teams, as well as for conflicting parties and regional organizations to facilitate their engagement in peace processes. Available training includes mediation and negotiation skills; process design; and mediation strategy development; as well as thematic issues in peace processes.

Mediation Guidance, Lessons Learned and Best Practices: The MSU also offers mediators and their teams a briefing package of key UN policies and approaches to mediation; a mediator's handbook of real-world examples from former mediators; a mediation start-up manual (forthcoming); and operational guidance notes on process design and thematic issues. The MSU also hosts an online databank of peace agreements and peacemaking experience at www.un.org/peacemaker.

Examples of each of these types of support are provided below.

Table 1: Examples of MSU Support for UN Mediation Efforts

<p>Holistic Support</p>	<p>The MSU has been involved in Cyprus since the beginning of the latest round of bilateral talks. The Unit has provided start-up funding; facilitated discussions in the working groups during the preparatory phase; and deployed constitutional, power-sharing and property experts. As input to the talks, analytical papers were also developed on the future executive branch of a re-united Cyprus.</p>
<p>Process Design and Thematic Support</p>	<p>The MSU assisted the Special Representative of the Secretary-General for the Great Lakes Region in the DRC by providing comparative mediation process designs from a variety of UN and other cases. The MSU also provided mediation start-up funding; identification of technical experts and support staff; as well as advice on strategy documents prepared by the mediation team.</p> <p>The MSU conducted a dedicated planning session for the Personal Envoy of the Secretary-General for Western Sahara, to assist in thinking through the mediation strategy and next steps in engaging the parties. MSU also developed substantive papers on alternatives and options to the self-determination issue with the aim of providing fresh ideas.</p> <p>The MSU has been working with the United Nations Mission in Nepal to tailor a mediation training programme for the Representative of the Secretary-General and her team.</p> <p>In the Central African Republic, the MSU provided training for the CAR Preparatory Committee for the All Inclusive Dialogue on how to run a national process. This early engagement was continued during the dialogue phase to support the SRSG on both process and thematic issues, such as security sector reform.</p> <p>In Central Asia, the Unit has been very active in working with the SRSG in his mediation efforts over water-sharing issues.</p>

Analytical Support from Headquarters	Not all of the work of the Unit requires the physical deployment of experts. In Iraq, the MSU provided the United Nations Assistance Mission for Iraq with a range of analytical papers on power-sharing, inter-ethnic relations and wealth-sharing. On power-sharing, the MSU prepared advisory papers on Northern Ireland. On the Kirkuk issue, the Unit provided lessons and good practices from Bosnia and Herzegovina; Chandigarh, India; Andorra; Cyprus; Belgium; Italy; and Switzerland. Expert papers were also developed on issues relating to federalism and wealth-sharing (e.g., hydrocarbon revenue and water sharing) using comparative models from Brazil, South Africa and Central Asia. All of this was carried out in close cooperation with the UNAMI team, but without actual deployment to the country.
High-profile Mediation Support	Typically the MSU operates behind the scenes, but its support to the SRSG in Kosovo in October/November 2008 was not so discrete. At the request of the Department of Peacekeeping Operations and in support of the United Nations Interim Administration Mission in Kosovo, the MSU deployed its expert on constitutional arrangements to assist the SRSG in conducting the consultations to reconfigure the international civil presence in Kosovo (i.e., the Secretary-General's 6-point dialogue with Belgrade, alongside close consultations with Pristina). This work played a role in paving the way for the full implementation of the Secretary-General's proposed reconfiguration of UNMIK and the deployment of the European Rule of Law Mission in Kosovo over the whole of Kosovo.
Evaluation of a Peace Process	Not all of the MSU's work is done upstream and early in the mediation process. The Unit is also starting to provide assistance in the evaluation of peace processes. In Côte d'Ivoire, in support of the United Nations Operation in Côte d'Ivoire, the Department of Peacekeeping Operations, the Peacebuilding Support Office and the Mediation Support Unit were part of a Headquarters Joint Evaluation Mission to take stock of the Facilitation conducted by Burkina Faso and to propose options for further assistance.

V. CONCLUSION

In summary, given the vital importance of preventing and resolving deadly conflict, it is incumbent on mediators (whether from the UN or elsewhere) to be as knowledgeable and skilled as possible in the field of mediation, including being able to profit from the lessons learned/best practices derived from those who have studied and those who have practised mediation. It is hoped that UN mediators will avail themselves of the information and resources available through the Mediation Support Unit and carefully consider the lessons/experience of other experienced colleagues. It is also hoped that envoys and representatives will take note of and record the lessons from their own experience, so that these can be tapped for future versions of this manual.

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UNITED NATIONS

DEPARTMENT OF POLITICAL AFFAIRS

GUIDANCE FOR MEDIATORS

**Addressing
Conflict-Related
Sexual Violence
in Ceasefire and
Peace Agreements**

DPA

POLICY AND MEDIATION DIVISION

MEDIATION SUPPORT UNIT

253

GUIDANCE FOR MEDIATORS

Addressing Conflict-Related Sexual Violence in Ceasefire and Peace Agreements



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Development of this guidance for mediators benefited from material generated during the United Nations Inter-Agency High-Level Colloquium “Conflict-Related Sexual Violence and Peace Negotiations: Implementing Security Council Resolution 1820” in June 2009. The Colloquium was organized by the United Nations Development Fund for Women (now part of UN Women), Department of Political Affairs, Department of Peacekeeping Operations, United Nations Development Programme, and Office for the Coordination of Humanitarian Affairs on behalf of UN Action Against Sexual Violence in Conflict and in partnership with the Centre for Humanitarian Dialogue. The Department of Political Affairs is grateful for the contributions of these partners and for the financial support provided through UN Action Against Sexual Violence in Conflict.

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Part I. Global Overview

Part I.

Global Overview

In attempting to broker durable and comprehensive agreements, the mediator and his/her team face significant demands to include a number of elements. This guidance offers advice to aid the mediator and his/her team in addressing a frequently used method and tactic of warfare: conflict-related sexual violence. It provides strategies for including this security and peacebuilding concern within ceasefire and security arrangements and in framing provisions for post-conflict justice and reparations. This guidance emerged from a United Nations¹ High-Level Colloquium on Conflict-Related Sexual Violence² and close consultation with eminent mediators, mediation support staff and subject experts.

In today's violent conflicts, civilians are increasingly caught on the front line. One of the most devastating forms of extreme hostility waged against civilians is conflict-related sexual violence.³ While women and girls are often primary targets, conflict-related sexual violence is also strategically perpetrated against men and boys.

¹ Organized by DPA, DPKO, UNDP, UNIFEM and OCHA on behalf of UN Action Against Sexual Violence in Conflict and in partnership with the Centre for Humanitarian Dialogue (HDC).

² Five guidance notes were drafted by working groups consisting of international subject experts and gender advocates. Development of the drafts into guidance occurred in consultation with eminent mediators, mediation support staff and subject experts. DPA is grateful to Mr. Ahmedou Ould Abdallah for his vital contribution to the framing and development of this guidance, and to UN Action Against Sexual Violence in Conflict for their support for the organization of the Colloquium and finalization of this guidance.

³ Conflict-related sexual violence is not specific to any era, culture or continent. Between 20,000 and 50,000 women were raped during the war in Bosnia in the early 1990s; in Sierra Leone, between 50,000 and 64,000 internally displaced women suffered sexual assault at the hands of combatants; the Rwandan genocide memorial notes that 500,000 women were raped during 100 days of conflict. In 2008 and 2009, the reported cases of sexual violence in the Democratic Republic of the Congo totaled 15,314 and 15,297, respectively. In 2010, the volume of cases reported monthly remained constant. See "Report of the Secretary-General on the implementation of Security Council resolutions 820 (2008) and 1889 (2009)" (S/2010/604).

Arguably more powerful and less expensive than a gun, it is used to provoke displacement of populations in order to increase territorial control or access to resources (as in the Democratic Republic of Congo, Myanmar, Bougainville, Colombia and Darfur); affect reproduction and ethnicity (as in the former Yugoslavia and Rwanda); promote troop cohesion (as among forcibly recruited Revolutionary United Front fighters in Sierra Leone) and undermine social and community cohesion.

Highly effective, its use humiliates, dominates, instills fear, breaks identity and creates enduring ethnic, family and community divides. Yet, to date, few ceasefire or peace agreements have made provisions for addressing conflict-related sexual violence. Only three ceasefire agreements (Nuba Mountains, Burundi and Lusaka) specifically include sexual violence, for instance, as part of the definition of ceasefire.

Addressing conflict-related sexual violence at the outset of the mediation strategy can increase the durability of peace by mitigating security fears and improving transparency, accountability and confidence among parties.

If left unaddressed, it can be used as a means to continue acts of war outside the purview of agreements and monitoring teams, which can trigger cycles of vengeance and vigilantism, and risk undermining confidence in agreements and possibly the mediation process itself.

Legal Norms⁴

When is Sexual Violence Conflict-Related?

The United Nations Security Council considers that “*sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security*”.⁵ Three Security Council resolutions specifically oblige the UN system to address conflict-related sexual violence.⁶

Sexual violence as a “tactic of war” refers to acts of sexual violence that are linked with military/political objectives and that serve (or intend to serve) a strategic aim related to the conflict. Sexual violence, however, does not need to be explicitly orchestrated for military gain to be considered relevant to the Security Council’s remit. The Council also considers sexual violence conflict-related when it is “*committed against civilians*”, committed “*in and around UN managed refugee and internally displaced persons camps*”, or committed during “*disarmament, demobilization and reintegration processes*”.

When is Sexual Violence an International Crime?

Depending on the circumstances of the offense, sexual violence can constitute a war crime, crime against humanity, act of torture or

⁴ See “Analytical and conceptual framing of conflict-related sexual violence”, UN Action Against Sexual Violence in Conflict.

⁵ Security Council resolution 1820 (2008).

⁶ Security Council resolution 1820 (2008), Security Council resolution 1888 (2009) and Security Council resolution 1960 (2010), among their provisions, prohibit amnesty for conflict-related sexual violence; require the UN system to develop mediation methods to address conflict-related sexual violence; and provide the accountability architecture to list and de-list perpetrators, as well as to report on patterns and trends in conflict-related sexual violence.

constituent act of genocide. The definition of sexual violence under international law encompasses rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, trafficking and any other form of sexual violence of comparable gravity, which may, depending on the circumstances, include situations of indecent assault, trafficking, inappropriate medical examinations and strip searches.⁷

Key Principles

The United Nations recognizes the complex and difficult task mediators face in reaching agreements that are not only comprehensive, but can also be effectively and realistically implemented.

In situations where conflict-related sexual violence has been used, or may have been used, UN mediators are obligated to introduce the subject in discussions with parties. At a minimum, sexual violence should be included within the definition of the ceasefire, and detailed or annexed in provisions for ceasefire monitoring. It is important that agreements, where necessary and appropriate, recognize conflict-related sexual violence as a method or tactic of warfare and include it in the framing of security and justice-related provisions. To this end, addressing conflict-related sexual violence can be seen as part of a continuum: from facilitating security, to dealing with the past, to breaking the cycle of impunity and ensuring reconciliation and rehabilitation.

⁷ See, for example, statutes and the case law of the International Criminal Tribunal for the Former Yugoslavia, International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone and the Elements of Crimes of the International Criminal Court.

In order to fulfill specific Security Council mandates⁸ on the issue, the mediator and his/her team can draw on the following checklist (and the more detailed guidance that accompanies it) for addressing conflict-related sexual violence as part of the overall mediation strategy.

During Ongoing Hostilities and at the Beginning of a Mediation Process:

- Assess whether there are credible reports of conflict-related sexual violence that may be occurring, or may have occurred.
- Actively seek to engage parties to discuss the immediate termination of conflict-related sexual violence, in discussion of other violations of human rights and international humanitarian law.
- Ensure consultation with and inclusion of women and gender experts in the process and as part of the mediation team.

Drafting and Negotiating Ceasefire and Peace Agreements:

Essential Agreement Provisions should ensure:

- Sexual violence is included as a prohibited act, especially in the definition or principles of ceasefire.
- Monitoring for sexual violence is included in ceasefire agreements, including in relevant annexes.
- Recognition of sexual violence used in conflict as a method and tactic of warfare, as applicable.
- Amnesties for crimes under international law are prohibited, and arrangements for transitional justice are included, particularly prosecution, reparations and truth-seeking bodies.

⁸ See Security Council resolution 1888 (2009).

Provisions for Security Arrangements should ensure:

- Command and control structures and codes of conduct for security actors prohibit conflict-related sexual violence and punish misconduct.
- Individuals credibly suspected of committing or being responsible for conflict-related sexual violence are excluded from participation or integration into government and the national security system, including armed forces, police, intelligence services and national guard, as well as civilian oversight and control mechanisms and other similar entities.
- Early, voluntary release and/or registration of those abducted, coerced or forcibly recruited⁹ from within the ranks of armed forces or groups.
- Security sector institutions are mandated to combat conflict-related sexual violence and training is provided to develop military and law enforcement capabilities to respond to it, including for military police.

Provisions for Justice and Reparations should ensure:

- Amnesties for crimes under international law are prohibited.
- Provisions for transitional justice processes address issues of conflict-related sexual violence with equal priority to other international crimes.
- Provisions for transitional justice mechanisms incorporate specific reference to conflict-related sexual violence; include

⁹ Forced recruits include forcibly recruited female and male combatants, forcibly recruited women and children associated with armed forces and groups, including forced wives and dependants, and domestic support.

measures to protect the security and dignity of victims and witnesses; and include women and gender experts in its design and oversight.

- Provisions for reparations and relief, including for victims of conflict-related sexual violence.

**Part II.
Addressing
Conflict-Related
Sexual Violence
During Ongoing
Hostilities and
Ceasefire Agreements**

Part II.

Addressing Conflict-Related Sexual Violence During Ongoing Hostilities and Ceasefire Agreements

This guidance note provides principles and strategies for mediators and their teams for addressing conflict-related sexual violence during ongoing hostilities and in the immediate, early framing of ceasefire.

At the earliest point of the mediation process, particularly during **ongoing hostilities**¹⁰ and in **ceasefire agreements**, the mediator and his/her team are advised to consider three key areas when addressing conflict-related sexual violence: (1) preparing the ground and confidence-building measures; (2) prohibiting sexual violence and promoting command responsibility; and (3) ensuring robust monitoring arrangements.¹¹

¹⁰ During ongoing hostilities, precursors to a ceasefire agreement can include temporary pauses in fighting, cessation of hostilities and letters of commitment, which can act as confidence-building measures.

¹¹ See “United Nations guidance notes for mediators on addressing conflict-related sexual violence”: security arrangements; and justice and reparations.

Principles

Principle 1: Assess whether conflict-related sexual violence may be occurring, or may have occurred.

At the outset of a mediation process, a mediator and his/her team are advised to obtain information on conflict-related sexual violence that may be occurring or may have occurred. In some cases, conflict-related sexual violence may be widespread, but not widely known, discussed or documented. In others, incidences may be reported by the media that have yet to be verified.

Principle 2: Actively seek to engage parties to discuss the immediate termination of conflict-related sexual violence in discussion of other violations of human rights and international humanitarian law.

United Nations envoys are required to raise conflict-related sexual violence issues in dialogue with parties to armed conflict. Mediators may convene parties to ensure a common level of understanding regarding the mediation and peace process. Early discussions on command responsibility can help to ensure that parties understand the risks and legal, political, economic and personal consequences for the use of conflict-related sexual violence. Parties may, thereby, want to avoid being perceived as perpetrating it. Such leverage can be used to achieve pre-ceasefire commitments to cease acts of conflict-related sexual violence, such as “letters of commitments” and other confidence-building measures.

Principle 3: Include sexual violence as a prohibited act.

In situations where conflict-related sexual violence may have occurred, sexual violence should be included as a prohibited act (as part of the definition or principles of ceasefire) which would breach the agreement. Its inclusion signals the seriousness of the issue to parties, victims and the public at large. It also serves as a reminder that such acts are also prohibited under international law, including the Law of Armed Conflict/International Humanitarian Law.

Principle 4: Ensure monitoring for sexual violence is included in ceasefire agreements, including in relevant annexes.

Provisions for monitoring should also include monitoring for conflict-related sexual violence. Such provisions help ensure that monitors (including the Department of Peacekeeping Operations) have an explicit mandate to monitor for conflict-related sexual violence.

Principle 5: Ensure inclusion of and consultation with women and gender experts.

Women with knowledge of the conflict, influential national and local female leaders, female monitors and gender experts can help mediators and their teams in gaining information and knowledge on conflict-related sexual violence. Such women and experts, particularly those that speak the local language, should be included in planning processes, negotiations, monitoring and investigations/inquiries to ensure that conflict-related sexual violence is effectively addressed throughout.

Implementation Guidance for the Mediator

Timing and staging are key to carefully creating a receptive environment and avoiding unnecessary delays or additional problems. A mediator may face challenges in approaching parties with the issue of conflict-related sexual violence in a way that is not perceived as an affront. Groundwork in advance of the discussion, including initiatives by civil society, including women's groups, can help the mediator to advance discussions on the issue positively.

Knowledge Gathering, Knowledge Sharing and Strategic Communication

- In order to assess whether conflict-related sexual violence may be occurring, or may have occurred, particularly during ongoing hostilities, proactive outreach and coordination efforts by the mediation team is advised with the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, humanitarian actors or a humanitarian liaison,¹² protection clusters,¹³ other UN actors, women's groups and networks,¹⁴ victims of conflict-related sexual violence and their communities, police, former soldiers, and religious and political leaders, as appropriate. Such actors can also encourage and empower local communities to monitor, document and report on conflict-related sexual violence early on.

¹² The mediation team could enlist the support of a humanitarian liaison in order to gather knowledge needed from the local level.

¹³ Protection clusters in mission settings bring together different UN entities and expertise with the goal of promoting protection and human rights.

¹⁴ As mandated by Security Council resolutions on women, peace and security.

- Due to the highly sensitive nature of conflict-related sexual violence, a range of ethical and safety issues must be considered before commencing any inquiry, in order to protect individuals participating as well as their families and communities. Researchers/interviewers must make every effort to avoid re-victimization, while fulfilling their objective to collect reliable data. Any data collected on sexual violence must respect established ethical and safety principles, such as security, confidentiality, anonymity, informed consent, safety and protection from retribution, and protection of the data itself.¹⁵
- Mediators and their teams may consider encouraging civil society, including women's groups, to **convene a public forum(s)** to discuss security and peacebuilding issues, including conflict-related sexual violence. Outcomes of such discussions can be fed back to the mediation team and used in discussion with the parties.
- Mediators may invite leaders and members of their negotiation teams, with the support of key actors and supportive governments or embassies, for **information sessions** on security concerns and important aspects of peace processes, and as an entry point for raising conflict-related sexual violence.¹⁵ Information on conflict-related sexual violence obtained from consultations, including outcomes of civil society forums, can be used to raise the issue in discussion with parties.
- Mediators should seek to make parties aware that sexual violence used as a tactic of conflict against civilians is a violation

¹⁵ See "Summary of ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies", UN Action Against Sexual Violence in Conflict. See also "Reporting and interpreting data on sexual violence from conflict-affected countries: dos and don'ts", UN Action Against Sexual Violence in Conflict.

of international law and potential war crime or crime against humanity. Mediators may also point out that the perpetration of sexual violence in conflict elicits command responsibility on the part of leaders who fail to prevent and to punish violations by their subordinates, regardless of whether or not they were directly involved.¹⁶ **Dialogue on the consequences** of conflict-related sexual violence may persuade parties to curtail acts that invite the scrutiny of the international community, the United Nations Security Council, international justice mechanisms and domestic constituencies.

- Mediators may remind parties to conflict that it is in their interest to prohibit, prevent and halt sexual violence for many reasons:
 - » Sexual violence during, and in the wake of, conflict weakens the legitimacy of actors (including non-state actors) who are seeking political recognition from the international community and local constituencies.
 - » Sexual violence undermines a state's authority and can expose leaders to criticism for their failure to protect civilians, and can erode public trust and popular support.

¹⁶ The International Criminal Court, as well as the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone, have indicted military and political leaders for conflict-related sexual violence.

- » Under Security Council resolution 1960, such actions may lead to targeted sanctions against armed groups credibly suspected of committing patterns of conflict-related sexual violence and possible International Criminal Court referrals.
- Enlisting the support of gender expertise can help ensure a coordinated, systematic approach to addressing conflict-related sexual violence (and other gender issues) in planning and analysis.

Information and Outreach:

- The mediation team can convene and communicate with radio professionals to support **radio** programming for peace, including on conflict-related sexual violence.
- Mediators can **share relevant information**, as appropriate, on conflict-related sexual violence with the media as well as information on legal norms prohibiting and criminalizing it and international indictments for such crimes.
- Mediators can encourage the organization of **social gatherings** (such as joint prayers or sports events, as appropriate) which can present an opportunity to discuss key issues (such as conflict-related sexual violence) and bring together diverse groups including women, youth, elders, soldiers, etc.

Pre-ceasefire Commitments:

Importantly, pre-ceasefire commitments can act as **confidence-building measures** which can be built upon in subsequent ceasefire and peace agreements. Such measures can include temporary cessation of hostilities, **letters of commitment** by armed

groups and **human rights agreements**,¹⁷ which should contain commitments to cease and prohibit sexual violence. In addition, **humanitarian access agreements**,¹⁸ while necessarily separate from political processes, can help build complementary commitments to halt and prevent conflict-related sexual violence.

Inclusion of Language on Conflict-Related Sexual Violence in Ceasefire Agreements

Language prohibiting conflict-related sexual violence in ceasefire agreements can be included in the following sections:

- The preamble;
- **Definitions or principles of ceasefire;**
- Provisions regarding the occupation of new ground positions or the movement of armed forces and resources from one area to another;
- Sections regarding freedom of movement;
- Provisions for monitoring; and
- Annexes which establish and define monitoring.

¹⁷ Human rights agreements, which have been signed in relatively few instances (such as the 1994 Guatemala Global Human Rights Agreement), have been incorporated into facilitated negotiations between parties to an ongoing conflict. Some agreements include protection of civilian commitments, in which the parties affirm their respect for international humanitarian law (IHL).

¹⁸ Humanitarian access agreements are most commonly negotiated between humanitarian actors and parties to a conflict and have sometimes been signed concurrently with two or more parties to a conflict. This type of agreement tends to focus on facilitating access by humanitarian actors to the civilian population for the monitoring and delivery of assistance, as well as facilitating the civilian population's access to that assistance.

Examples of Language Prohibiting Sexual Violence in the Definition of Ceasefire

- **Nuba Mountains Ceasefire Agreement (2000):** Article II, Principles of Ceasefire: “(d.) All acts of violence against or other abuse of the civilian population, e.g., summary executions, torture, harassment, arbitrary detention and persecution of civilians on the basis of ethnic origin, religion, or political affiliations, incitement of ethnic hatred, aiming civilians, use of child soldiers, **sexual violence**, training of terrorists, genocide and bombing of the civilian population.”
- **Lusaka Agreement (1999):** Article 1 (3) “The Ceasefire shall entail the cessation of: all acts of violence against the civilian population by respecting and protecting human rights. The acts of violence include summary executions, torture, harassment, detention and execution of civilians based on their ethnic origin; propaganda inciting ethnic and tribal hatred; arming civilians; recruitment and use of child soldiers; **sexual violence**; training and use of terrorists; massacres; downing of civilian aircraft; and bombing the civilian population.”
- **Ceasefire Agreement between the Government of the Republic of Burundi and the Palipehutu — FNL (2006):** Article II “(1.) Ceasefire Agreement shall imply: ... (1.1.5) Cessation of all acts of violence against the civilian population: acts of vengeance; summary executions; torture; harassment; detention and persecution of civilians on the basis of ethnic origin; religious beliefs; and or political affiliation; arming of civilians; use of child soldiers; **sexual violence**; sponsoring or promotion of terrorist or genocide ideologies.”

Monitoring Sexual Violence

Ceasefire agreements should contain language that provides for the monitoring of sexual violence, taking into account:

- **Establishing commissions to verify and monitor the ceasefire agreement:** Where there has been significant violence against the civilian population, a ceasefire commission may include a distinct human rights monitoring unit, tasked with the ability to receive complaints, track incidents, including incidents of conflict-related sexual violence, and ensure follow-up.
- **Establishing a ceasefire observer modality, comprised of a civil society or NGO non-violent “peace force”¹⁹ with expertise in conflict-related sexual violence:** Where belligerents are dispersed in many areas, among the population and without clearly defined zones, the mix of United Nations peacekeepers and a civilian force could monitor the positioning, movements and actions of belligerents, including incidents of conflict-related sexual violence.
- **Identification and reporting of sexual violence used as a method or tactic of war:** Conflict-related sexual violence can take many forms. Monitoring teams should be aware of the *context* of the sexual violence (is it part of a series of sexual attacks, or a broader attack against the civilian population?), the *identity* of the attackers (are they current

¹⁹ Such as in Sri Lanka and Mindanao where third country civilian observers were “inter-positioned” between belligerents, or the establishment of a coalition of NGO and civil society actors serving as a neutral civilian monitoring mechanism as in the 1996 ceasefire agreement in Mindanao.

or former soldiers, militia or armed volunteers?) and the *patterns* (was the attack similar to other types of attacks in timing or nature?). Monitoring teams may establish regular information-sharing meetings with civil society groups who may be aware of conflict-related sexual violence that may be occurring or may have occurred.

- **Team composition for sexual violence monitoring:** While the responsibility to monitor conflict-related sexual violence should be shared by the entire monitoring structure, the team should include female members, particularly those that speak the local language, and be tasked to document, investigate and report on conflict-related sexual violence incidents. The presence of female monitors can help to ensure access to and interaction with female victims. It can also help in speaking with male victims, who may be less reluctant to speak about incidences with female monitors.

Education and Information Campaigns

- Agreements can call for education and information campaigns which can increase government transparency and public confidence²⁰ and can educate and inform combatants (rank and file), those associated with armed groups and the wider public of the contents, implications and expectations of the agreement, including those relating to conflict-related sexual violence.

²⁰ See “Security and Demilitarization: Peace Agreement Drafter’s Handbook”, Public International Law and Policy Group.

- **Bougainville Peace Agreement** (Bougainville, 2001) called for “*an active joint programme to promote public awareness, understanding and support of weapons disposal*”. As a result, Bougainville DDR monitors held public meetings in villages where they read the peace agreement and DDR provisions, and distributed material on the DDR process. They also organized sports and cultural activities to create forums where general communication could take place between the monitoring forces and communities.

Mediator's Checklist

- Have there been credible reports of conflict-related sexual violence? If so, which parties to the conflict may be suspected or accused of using the tactic?
- Which actors at the local level have knowledge and information on conflict-related sexual violence (e.g., UNHRC, OHCHR, OCHA, local women's groups, etc.)? Is this knowledge being gathered, documented and saved (and by whom)? Are various knowledge gathering efforts being coordinated (and by whom)?
- Do the mediator and his/her team have the information they need to determine whether conflict-related sexual violence may be occurring or may have occurred? Has the mediation team ensured that information is being channeled to them regarding the number and types of victims, chain of command, and patterns of rape and other forms of conflict-related sexual violence occurring?
- Have gender experts been consulted for technical advice to the agreement and included in monitoring?
- Have gender experts, women with knowledge of the conflict, including influential national and local female leaders (including from women's organizations and networks), been identified and engaged in the process?
- Is outreach being conducted with all parties to conflict to bring them together to enhance their knowledge and to ensure a common level of understanding of aspects of a peace process and

international law, including in regard to sexual violence? For instance, are parties aware that military/political leaders have been indicted for conflict-related sexual violence?

- Have parties to conflict been brought together to make specific and time-bound commitments to ceasing all acts of sexual violence, such as “the issuance of clear orders through chains of command prohibiting sexual violence” as called for by the UN Secretary-General? ²¹
- In drafting an agreement, has sexual violence been included in the definition or principles of ceasefire? Has language been included on monitoring conflict-related sexual violence, including within annexes defining ceasefire monitoring?
- In situations with a current or possible UN peacekeeping presence, does the language provide the Department of Peacekeeping Operations with a mandate to monitor conflict-related sexual violence as part of its activities?

²¹ “Report of the Secretary-General on the implementation of Security Council resolutions 1820 (2008) and 1888 (2009)” (S/2010/604).

**Part III.
Addressing
Conflict-Related
Sexual Violence in
Security Arrangements**

Part III.

Addressing Conflict-Related Sexual Violence in Security Arrangements

This guidance note provides principles and strategies for mediators and their teams for addressing conflict-related sexual violence in security-related provisions of ceasefire and peace agreements.

Addressing conflict-related sexual violence in security arrangements can help to protect against and prevent future occurrences and build effective, responsive security institutions. The mediator and his/her team are advised to consider three key areas in addressing sexual violence in security arrangements: (1) command responsibility and accountability of armed forces and groups; (2) community security; and (3) military and law-enforcement capability.

Principles

Principle 1: Recognize sexual violence used in conflict as a method and tactic of warfare.

Sexual violence, when used as a method or tactic of warfare, should be treated as such in relevant provisions of ceasefire and peace agreements, including those which define disengagement and set the rules and responsibilities for demilitarized zones, buffer zones and DDR-related assembly areas/points.

Principle 2: Ensure provisions for the early, voluntary release and/or registration of those abducted, coerced or forcibly recruited²² from within the ranks of armed forces or groups.

Those who have been abducted, coerced or forcibly recruited from within the ranks of an armed force or group are often subject to high levels of sexual violence. It is important for agreements to contain provisions that specifically call for their early and voluntary release. Such provisions can also act as a confidence-building measure.

Principle 3: Exclude individuals credibly suspected of committing or being responsible for conflict-related sexual violence from participation in or integration into government and the national security system, including armed forces, police, intelligence services and national guard, as well as civilian oversight and control mechanisms, etc.

In efforts to prevent continued perpetration of conflict-related sexual violence in post-conflict environments, it is important to include provisions that call for the exclusion of individuals credibly suspected of committing or being responsible for conflict-related sexual violence from integration into armed forces, police and national guard, as well as civilian oversight and control mechanisms, etc. Provisions should also recommend the referral of such individuals to appropriate investigatory and prosecutory bodies, as well as placement in rehabilitation programmes.

²² Forced recruits include forcibly recruited female and male combatants, forcibly recruited women and children associated with armed forces and groups, including forced wives and dependants, and domestic support.

Principle 4: Ensure that command and control structures and codes of conduct for security actors prohibit sexual violence and punish misconduct.

It is imperative that sexual violence is addressed in the discipline, mandates and roles of armed groups and transitional security forces. This can have a critical impact on the sustainability of security and peace.

Principle 5: Mandate security sector institutions to combat conflict-related sexual violence and include provisions for training aimed at developing military and law enforcement capabilities to respond to sexual violence, including for military police.

Post-conflict security arrangements and security sector institutions should be mandated and resourced to provide protection against conflict-related sexual violence. Security actors (such as military and police) need specific mandates to address conflict-related sexual violence, particularly targeting vulnerable communities (internally displaced persons (IDPs), refugees). Security forces engaged in transitional security arrangements must also possess the resources, partnerships and integrated structures to combat conflict-related sexual violence effectively.

Implementation Guidance for the Mediator

Conflict Analysis

In the earliest stages of conflict analysis and assessment, sexual violence used as a method or tactic of conflict should be considered as a relevant conflict factor that may contribute to the resurgence of violent conflict over the short and longer term. Such analysis can help to build comprehensive security plans and threat assessments that include measures to prevent and respond to conflict-related sexual violence.

Inclusion of Language on Sexual Violence in Provisions for Security Arrangements in Ceasefire and Peace Agreements

Where possible, provisions for security arrangements in ceasefire and peace agreements should include sexual violence. Importantly, annexes often elaborate on security arrangements, and can offer practical entry points for specifically addressing it.

- **Language can be integrated into agreements and their annexes which provide for, inter alia:**
 - » **Dismantling:** In provisions requiring command responsibility in the dismantling of troops and armed groups operating alongside parties' troops, or on territory under parties' control,²³ parties can be called upon to take all necessary measures to prevent, respond to and punish sexual violence by those under their command.

²³ See Nuba Mountains Ceasefire Agreement (2002), Article 3.3. While this example does not contain language on sexual violence, it is referenced here as an example of where such language could be included.

- » **Disengagement:**²⁴ Provisions for disengagement, particularly definitional clauses,²⁵ should prohibit the use of sexual violence as a method or tactic of warfare.
- » **Withdrawal of Foreign Forces:** In inter-state conflicts, where provisions are made for the withdrawal of foreign forces, force commanders should be called upon to prevent, respond to and punish acts of sexual violence by those under their command.
- » **Release of Hostages and Exchange of Prisoners:** Such sections should include and specify the early, voluntary release of those abducted, coerced or forcibly recruited from within the ranks of an armed force or group.
- » **Rules of and Responsibilities in Relation to Demilitarized and Buffer Zones:** Provisions for the separation of forces should ensure monitoring of buffer zones by military observers and deployment of special police forces around vulnerable communities, cantonments and IDP and refugee camps. Rules for demilitarized and buffer zones should include provisions for prohibiting sexual violence and for ensuring special protection against it.

²⁴ In situations where disengagement does not apply, definitions of the cessation of hostilities should specifically prohibit the use of sexual violence. See “United Nations Guidance Note for Mediators: Addressing Conflict-Related Sexual Violence during Ongoing Hostilities and Ceasefire Agreements”.

²⁵ See Nuba Mountains Ceasefire Agreement (2002), Article 3.1; Lusaka Ceasefire Agreement (1999), Annex A, 2.1; Article 5, Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy, the Movement for Democracy in Liberia and the political parties (2003). While these examples do not contain language on sexual violence, they are referenced here as examples of where such language could be included.

- » **Integration of Former Combatants into Security and Other State Institutions:** Such sections should specifically require vetting of those with a history or association with conflict-related sexual violence.
- » **Plans for Security and Policing:** Such provisions should address the consequences of conflict-related sexual violence in a post-conflict environment and require training to develop military and law-enforcement capabilities to prevent and respond to conflict-related sexual violence.

Monitoring

- Provisions for monitoring and monitoring mechanisms, including joint military commissions (JMCs) and international stabilization forces, established to assist in and monitor the disengagement and redeployment of combatants should include, inter alia:
 - » Verification of disengagement of sexual violence used as a method and tactic of conflict.
 - » Monitoring and reporting on incidences of conflict-related sexual violence, including identification of parties credibly suspected of the tactical use of sexual violence.
 - » Representation of women and gender experts in monitoring structures to help ensure access to and interaction with female victims, as well as monitor for conflict-related sexual violence.

Control of Weapons

Discussions on collection, documentation, control and disposal of small arms and light and heavy weapons of combatants and of the

civilian population can contribute to preventing conflict-related sexual violence. For instance, it is estimated that 90 per cent of the cases of conflict-related sexual violence in Eastern Democratic Republic of Congo have been perpetrated by men with guns, outside the purview of existing ceasefire and peace agreements. The engagement of women's groups and networks can help with eventual disarmament processes.

Demobilization and Reintegration

Provisions that list categories of people to be demobilized should specifically include those abducted, coerced or forcibly recruited, particularly women and girls, from within the ranks of armed forces or groups. Consideration should be made for delays in the identification and listing of such groups. Provisions should also take into consideration the need to extend time frames and set aside necessary services and financial resources in DDR programmes.

It is also important to consider and include provisions for assistance, health care and counseling services for victims of conflict-related sexual violence who are eligible for the DDR programme. Those who have experienced rape (especially repeated rapes) and sexual abuse sustain damage to internal and reproductive organs and other physical health problems, which often results in physical and psychological disability.

DDR-related provisions in agreements should also recognize the need for gender-responsive reconciliation and public safety programmes for communities receiving large numbers of ex-combatants.

For those with a history of or an association with conflict-related sexual violence, provisions should ensure that such individuals are vetted from entry into security institutions and are brought to

justice. Considerations should also be made for counseling and rehabilitation services.

Examples of Existing Language

- **The Agreement on Disarmament, Demobilization and Reintegration between the Government of Uganda and the Lord’s Resistance Army/Movement** (2008) addresses sexual violence in provisions for Demobilization by requiring, in Article 5.4 (c), “Protection from sexual violence or abuse, appropriate services for pregnant women and lactating mothers, and adequate presence of female staff.”
- **Darfur Peace Agreement** (2006), Article 26, para. 278: “AMIS Civilian Police together with GoS Police, and Movements’ Police Liaison Officers in their respective areas of control, shall establish separate police counters for the reporting of crimes committed against women, and women police personnel should staff these counters.”
- **Darfur Peace Agreement** (2006), Article 26, para. 279: “A significant number of GoS Police, Movements’ Police Liaison Officers and AMIS Civilian Police officers shall be women; they shall have specialist gender units to work with women and children; and all their investigations and monitoring shall include at least one woman.”

Mediator's Checklist

- Do security-related provisions in the agreement include, inter alia:
 - Command responsibility to condone, prevent, respond to and punish acts of conflict-related sexual violence, for instance, in dismantling, disengagement and the withdrawal of forces?
 - Early, voluntary release of those abducted, coerced or forcibly recruited from within the ranks of armed forces or groups?
 - Prohibition of the use of sexual violence as a method or tactic of conflict?
 - Monitoring of the use of sexual violence as a method or tactic of conflict?

- Are transitional security arrangements mandated to combat conflict-related sexual violence through police and military responses?

- Have provisions been included to vet former combatants with a history or association with conflict-related sexual violence from entry into security institutions?

- Have plans been included for the development and funding of training for military and law enforcement capabilities to prevent and respond to conflict-related sexual violence?

- Are there plans for information and education campaigns on the content, implications and expectations of the agreement, including those relating to conflict-related sexual violence?

**Part IV.
Addressing
Conflict-Related
Sexual Violence in
Framing Provisions for
Post-Conflict Justice
and Reparations**

Part IV.

Addressing Conflict-Related Sexual Violence in Framing Provisions for Post-Conflict Justice and Reparations

This guidance note provides principles and strategies for mediators and their teams for ensuring that provisions for justice and reparations address conflict-related sexual violence.²⁶

While an increasing number of peace agreements provide for a range of justice mechanisms to ensure accountability for war-time violations, most peace agreements have been silent on questions of accountability for conflict-related sexual violence, and redress for its victims.²⁷ Effective transitional justice and reconciliation mechanisms²⁸ and domestic courts are vital to the prosecution of conflict-related sexual violence and ensuring reparations.

²⁶ Security Council resolution 1820 (2008) calls for justice for victims of conflict-related sexual violence, and places the onus on those seeking to resolve conflict to ensure that this is addressed during mediation and in peace agreements.

²⁷ According to research conducted by UN Women, since the end of the cold war, only the Sun City Agreement for Democratic Republic of Congo in 2003 and the Agreement on Accountability and Reconciliation (and its annex) between the Government of Uganda and the Lord's Resistance Army in 2008 include language mentioning sexual violence in relation with questions of accountability. See UN Women (2010), "Women's participation in peace negotiations: connections between presence and influence".

²⁸ Transitional justice mechanisms can include truth and reconciliation commissions, hybrid tribunals, local customs and rituals.

Mediators can help to lay the groundwork for transitional justice mechanisms that strengthen national legal and institutional environments in which agreements are implemented.

The mediator and his/her team are advised to consider three key areas in addressing conflict-related sexual violence in framing provisions for post-conflict justice and reparations in peace agreements: (1) accountability for those with a history or association with conflict-related sexual violence; (2) protection and participation of victims and witnesses engaged in pursuit of justice and reparations; and (3) reparations for victims of conflict-related sexual violence.

Principles

Principle 1: Justice processes should address issues of conflict-related sexual violence with equal priority to other international crimes.

Conflict-related sexual violence is a constitutive element of several international crimes, and can amount to a war crime, crime against humanity, constituent act of genocide or gross violation of human rights.

Principle 2: Amnesties for crimes under international law are prohibited.

It is the position of the United Nations that the peace agreements it endorses can never promise amnesties for genocide, war crimes and crimes against humanity or gross violations of human rights (which

sexual violence, under international law, can amount to).²⁹ Security Council resolution 1820 (2008) reinforces this position by calling for the exclusion of sexual violence crimes from amnesty provisions.³⁰

Principle 3: Ensure provisions for transitional justice mechanisms incorporate specific reference to conflict-related sexual violence; include measures to protect the security and dignity of victims and witnesses; and include women and gender experts in its design and oversight.

Transitional justice mechanisms should include a mix of approaches, from criminal accountability, to truth seeking, and reparations and redress. The mix of mechanisms should be carefully tailored to meet the demands of the specific context, ensuring that cultural issues, resource constraints and statutes of limitations do not bar justice, truth and comprehensive reparations for sexual violence.

It is important to keep in mind that victims seeking accountability and redress for conflict-related sexual violence often face multiple challenges including social ostracism, physical threats and institutional barriers. It is important for transitional justice mechanisms to provide for strategies to protect victims and witnesses, including victim/witness protection programmes, provisions for in camera hearings, support counselors, etc.

²⁹ S/2004/616, para. 10.

³⁰ Under Security Council resolution 1820 (2008), Member States are also under obligation to prosecute persons responsible for conflict-related sexual violence, and to ensure that victims, particularly women and girls, have equal protection under the law and equal access to justice.

Principle 4: Ensure there are provisions which call for reparations, including for victims of conflict-related sexual violence.

Reparations can assist in mitigating the impacts of harm suffered. Reparations have particular importance for victims of conflict-related sexual violence who suffer not just the physical and mental injuries resulting from the crime, but frequently also the added harm of ostracization and related risks of vulnerability and destitution. Reparations programmes hold the potential to deliver targeted resources to an otherwise marginalized population, providing a vehicle for recovery and contributing to sustainable livelihoods.³¹

Considerations and Challenges

While international humanitarian and criminal law codifies sexual violence in conflict as a war crime, crime against humanity or constituent act of genocide, negotiating justice and accountability for sexual violence crimes requires taking a number of elements into consideration, including:

Truth-Seeking Mechanisms: Many peace agreements provide for a truth-seeking mechanism as a first step to uncovering war-time violations or as a parallel mechanism to criminal prosecutions. Yet, victims seeking accountability for sexual violence crimes face multiple challenges including social ostracism, physical threats (backlash attacks by perpetrators) and institutional barriers when seeking to address transitional justice mechanisms. Unless special measures

³¹ Rashida Manjoo (2010), "Thematic report on reparations for women" (Special rapporteur on violence against women).

are provided for in the agreement to protect the dignity and safety of victims, they are at risk of exclusion or re-traumatization.

Criminal Justice: While some peace agreements provide for the establishment of war crime tribunals or chambers, the majority of war-time abuses tend to be referred to the domestic justice system with a strong emphasis on traditional/informal justice processes. Most agreements do not address how these processes can effectively prosecute conflict-related or protect the dignity and safety of survivors of sexual violence. Prosecutions through these mechanisms often focus on the senior-most perpetrators, while “de facto” amnesty continues to exist for the “rank and file”. This has an impact on perceived impunity and redress for victims.

Reparations and Relief: The multidimensional impact of violations on victims’ physical and psychological health, as well as wider socio-political and economic consequences, resulting from social ostracism once crimes are reported, requires multiple forms of redress and rehabilitation — which need to be taken into account in reparation, relief and compensation programmes.

Implementation Guidance for the Mediator

Amnesty Provisions:

Conflict-related sexual violence is a constitutive element of several international crimes, and can amount to a war crime, crime against humanity, constituent act of genocide or gross violation of human rights. The Roadmap for ending the Crisis in Madagascar (2011):

article 3.18 ensures the exclusion of such international crimes from amnesty:

Article 3.18: “The granting of a blanket amnesty for all political events which happened between 2002 and 2009, except for crimes against humanity, war crimes, crimes of genocide and other serious violations of human rights and fundamental freedoms. The amnesty law shall be ratified by the Transitional Parliament, and no election shall take place to the ratification.”

Provisions that address transitional justice mechanisms should incorporate specific reference to conflict-related sexual violence and include measures to protect the security and dignity of victims and witnesses, taking into consideration, inter alia:

- Mechanisms for judicial treatment of conflict-related sexual violence should include criminal accountability, truth seeking and reparations, among others. One mechanism on its own may not be sufficient to address sexual violence after the conflict.
- A transitional justice plan should include an oversight mechanism to ensure that conflict-related sexual violence is effectively addressed. This could take the shape of a national human rights body, established by a peace agreement, and given a mandate over the monitoring and reporting of human rights violations, as well as the establishment of transitional justice processes. Establishment of such a body within the framework of a peace agreement could lead to a harmonized approach to conflict-related sexual violence cases through transitional justice measures.

- The need to strengthen domestic law, institutions and enforcement capacity in order to ensure the proper implementation of a transitional justice strategy, and to guard against future abuses and impunity. Given common gender biases in national law and institutions, legal reforms are of particular importance in addressing conflict-related sexual violence.
- Mediators should be aware of the limitations of informal justice mechanisms, and agreements should help to ensure that criminal accountability and other formal justice processes are not circumvented.

Comprehensive Reparations:

Agreements that contain provisions for reparations, and adequate funding for them, is vital. In Sierra Leone, for instance, the Truth and Reconciliation Commission recommended that the Government establish pensions for certain categories of beneficiaries, including women affected by the conflict, and that the size of these pensions be determined in relation to ex-combatant pensions and demobilization packages.

Mediator's Checklist:

- Is outreach being conducted with all parties to conflict to bring them together to enhance their knowledge and to ensure a common level of understanding of aspects of peace processes and international law, including in regard to sexual violence? For instance, are parties aware that sexual violence used as a tactic of war is a violation of international law which may reduce legitimacy before the international community? Are parties aware that military/political leaders have been indicted for conflict-related sexual violence, and that amnesties for crimes under international law are prohibited?
- Have gender experts and legal experts been consulted for additional technical advice?
- Do provisions for transitional justice mechanisms address conflict-related sexual violence and call for the inclusion of women and gender experts in their design?
- Are measures in place to ensure that justice mechanisms facilitate the protection and participation of witnesses and victims of conflict-related sexual violence?
- Does the agreement contain provisions for reparations?

In today's violent conflicts, civilians are increasingly caught on the front line. One of the most devastating forms of extreme hostility waged against civilians is conflict-related sexual violence. Arguably more powerful and less expensive than a gun, it is used strategically to provoke displacement of populations, affect reproduction and ethnicity, promote troop cohesion and undermine community cohesion. Highly effective, its use humiliates, dominates, instills fear, breaks identity and creates enduring ethnic, family and community divides.

The United Nations requires its mediators to address conflict-related sexual violence. This guidance offers mediators and their teams principles and strategies for including this critical peacebuilding and security concern in ceasefire and peace agreements.

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DEPARTMENT OF POLITICAL AFFAIRS

Mediation Start-up

GUIDELINES

2011

DPA

POLICY AND MEDIATION DIVISION

MEDIATION SUPPORT UNIT

307

While much guidance has been written on the art of mediation itself, very little attention has been paid to operational aspects. These Guidelines seek to fill this gap by providing guidance to managers, desk officers and field staff of the UN Department of Political Affairs (DPA) on the start-up and establishment of mediation initiatives led, co-led or supported by the United Nations. Their purpose is to consolidate DPA's institutional knowledge on strategy development, planning, support and coordination aspects of mediation initiatives.

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UN/DPA Mediation Start-up Guidelines

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A. RATIONALE AND PURPOSE

These Guidelines provide guidance to managers, desk officers and field staff of the UN Department of Political Affairs (DPA) on the start-up and establishment of mediation initiatives led, co-led or supported by the United Nations. Their purpose is to consolidate DPA's institutional knowledge on strategy development, planning, support and coordination aspects of mediation initiatives.

Since 2007, DPA has increased its efforts to become more proactive, operational and professional in the areas of conflict prevention, mediation and peacebuilding (see *DPA Progress Report 2009*). In support of this objective, DPA has established a small Mediation Support Unit (MSU), rapid funding mechanisms, a standby team of experts, a mediation roster and partnerships with specialized institutions. It has also developed a number of guidance and best practices products on various aspects of mediation. The development of the present Guidelines on the start-up of mediation initiatives is an integral part of this agenda, and is consistent with a wider trend towards doctrine development across the field of peace and security within and outside the UN (see *Secretary-General's report on enhancing mediation and its support activities*).

The landscape of international mediation has at the same time evolved with the increasing involvement of regional organizations and other major actors in the field of peacemaking including Member States, non-governmental organizations (NGOs) and eminent international personalities. The opportunities resulting from the growing number of mediation actors calls for a clearer articulation of how the UN chooses its mediation

engagements and starts its own processes in relation to other mediation actors.

Finally, experience has shown that mediation engagements have unique support requirements. These require a tailored approach, particularly in terms of speed. Mediators have relied on various support arrangements involving complex procedures and decision-making, which highlight the need for further guidance in this area. While much guidance has been written on the art of mediation itself, very little attention has been paid to operational aspects. The present Guidelines seek to fill this gap.

In conjunction with the Mediation Start-up Resource Package and the Mediation Start-up Training Module, and building on the guidance contained in the Special Envoy Briefing Package and the *UN Mediator's Manual*, these Guidelines seek to enable DPA to engage in mediation:

- » More **consistently**, by providing guidance on the appropriateness of using mediation as a conflict management and resolution tool in relation to other types of peacemaking initiatives
- » **Faster**, by reducing the “transaction costs” linked to the renegotiation of internal procedures, educating staff on operational start-up and by providing a base of templates that can be recycled and adapted to each operation
- » More **effectively**, by avoiding mistakes made in the past and leveraging lessons learned

B. SCOPE

The Mediation Start-up Guidelines are focused on the start-up of mediation operations led, co-led or supported by the UN Department of Political Affairs. More specifically, the Guidelines address assessment and strategic planning, roles and functions of various UN components and external actors, operational planning, key coordination and communication systems and transition out of the start-up phase. For the purpose of these Guidelines, “mediation” is defined as a form of good offices whereby a third party, upon request, seeks to assist parties to a dispute to reach an agreement voluntarily through a formal dialogue process. The Guidelines provide advice on start-up processes up to the point where a mediation team has been established and operational issues have been sufficiently addressed to allow a team to begin and sustain its activities. The Guidelines do not address mediation methods, procedures and best practices as these are covered in other guidance materials such as the *UN Mediator’s Manual*.

Given the diversity of mediation processes undertaken by the UN, not all aspects of these Guidelines will apply to each operation. Peacekeeping operations and special political missions (SPMs), for example, have good offices and mediation functions, but these missions have specific requirements in terms of funding and staffing. Certain aspects related to the development of mediation strategies or design of coordination architecture outlined in these Guidelines may, however, apply. Some engagements tend to be managed through the deployment of small teams for which some support aspects will obviously not

apply. As such, these Guidelines are designed to be flexible and offer guidance as applicable to each situation.

While the principles and approaches contained in these Guidelines should be applied only as appropriate for each operation, conformity with the spirit of the suggested approaches — which reflect best practices, lessons learned and institutional experience — is recommended.

C. GUIDELINES

1. Introduction: overview of the start-up phase and specific objectives

The start-up phase of mediation engagements covers the period between the moment when a decision is made for the UN to consider active involvement in the resolution of a particular conflict or situation and the time when an operational response has been established. It includes the conflict assessment, the determination of a mode of engagement (which may or may not include mediation), the development of a strategy, operational planning and mobilization of staff and resources as well as the establishment of support and coordination systems.

The start-up process can be divided in four groups of activities:

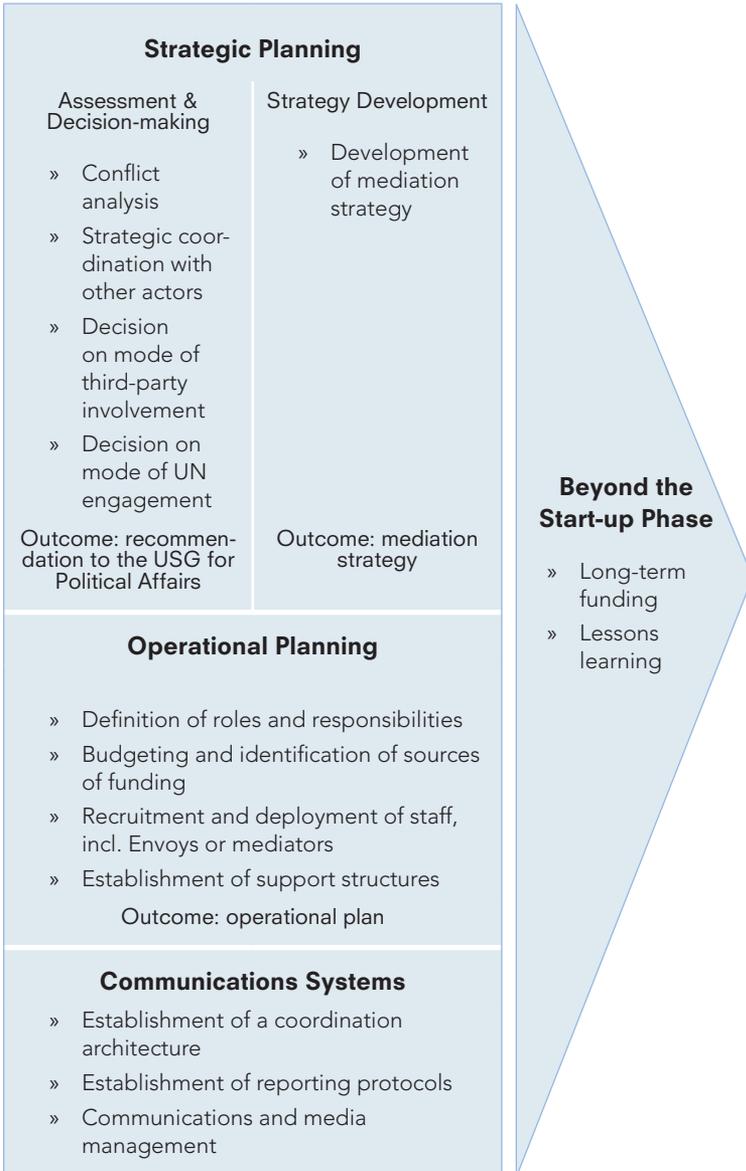
- » **Strategic planning**, which comprises:
 - › Assessment and decision-making, during which a conflict is assessed and a decision on whether, how and with whom to engage is made. *The outcome of this group of activities is a recommendation to the Under-Secretary-General for Political Affairs.*
 - › Strategy development, during which an engagement strategy is developed to achieve objectives. *If the chosen mode of engagement is mediation, the outcome of this activity is a mediation strategy.*
- » **Operational planning**, during which resources, systems and partnerships to support the strategy are

identified and mobilized. The outcome of this group of activities is an operational plan.

- » **Establishment of coordination and communication systems**, where a coordination architecture is set up and reporting and communication protocols are defined.
- » **Thinking beyond the start-up phase**, during which longer-term options for continued engagement (if appropriate) are identified and initial lessons learning activities are undertaken.

Given the pace of operations and the frequent urgency to launch an initiative even before some critical details have been worked out, it may not always be possible to follow these steps in strict order; in most cases, they will occur simultaneously or even retroactively. *The key principle, however, is that operations should be launched on the basis of a sound assessment of the situation, clear objectives, a defined strategy, tailored support systems and solid coordination with partners.*

Figure 1
At a glance: overview of the start-up process



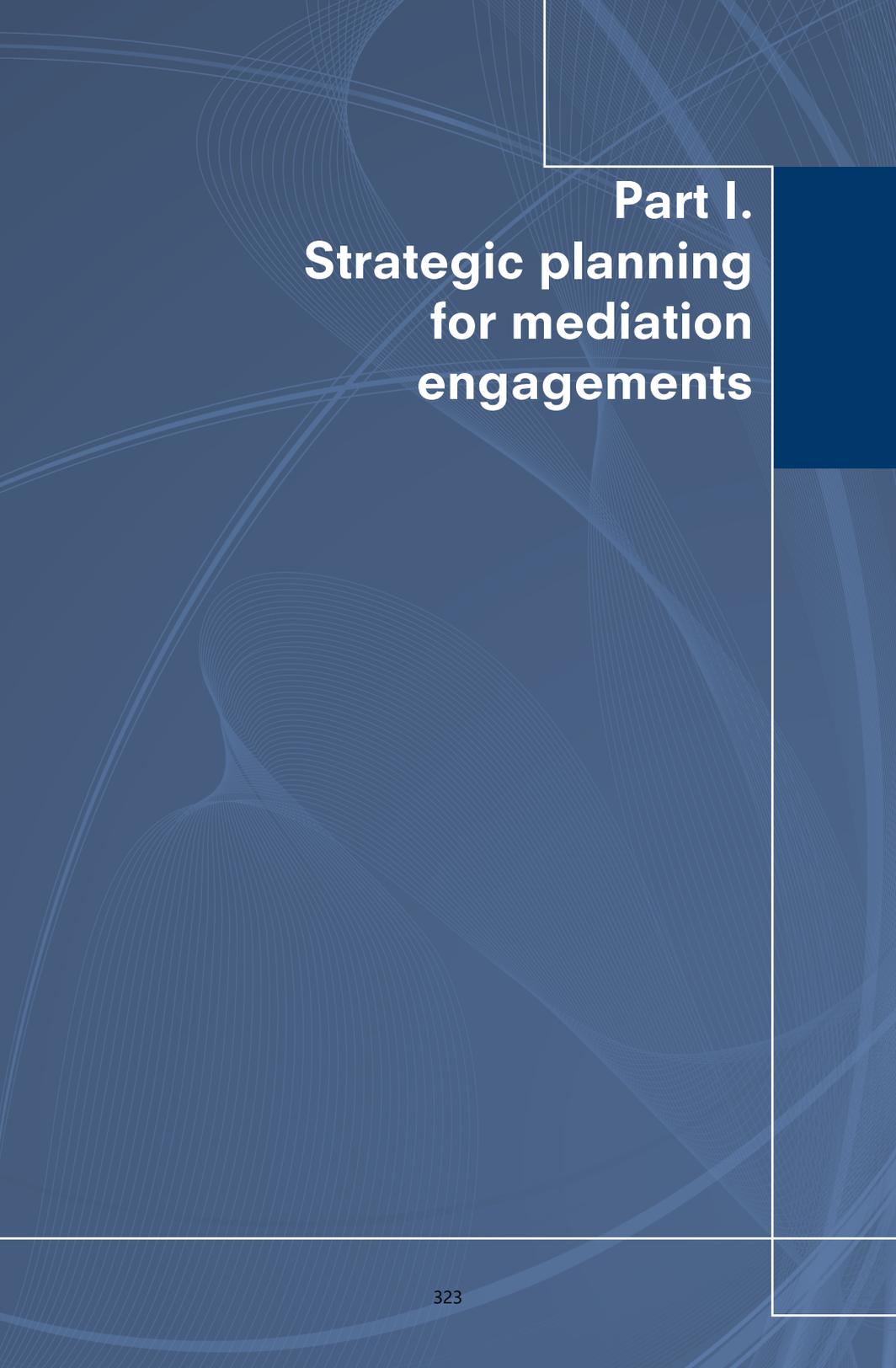
2. Sequencing priorities in the short and medium term

Different priorities should guide start-up managers as the process unfolds.

In the immediate short term, priorities should be to (1) understand the conflict and recommend a way forward that is coherent with the strategic objectives of the UN as well as with the actions of partners, and (2) to identify and mobilize staff and funding that will enable further strategic and operational planning.

Once immediate priorities have been addressed, other short-term priorities are to conduct detailed operational planning, mobilize supporting staff and establish coordination and communication systems.

As the operation settles in, the priority will shift to planning for medium-term engagement, including assessing whether the effort should continue and exploring longer-term funding options.



Part I.
**Strategic planning
for mediation
engagements**

Since one of the most promising approaches to the peaceful settlement of disputes is skilful third-party mediation, we, the United Nations, have a responsibility to “we the peoples” to professionalize our efforts to resolve conflicts constructively rather than destructively and to “save succeeding generations from the scourge of war”.

— Report of the Secretary-General
on enhancing mediation and its
support activities, 2009

Part I.

Strategic planning for mediation engagements

3. Assessment and decision-making

3.1. Understanding a conflict and opportunities for resolution: conflict analysis

All UN engagements should start with the conduct of a thorough conflict analysis seeking to identify the conflict dynamics, history, main actors, root causes and opportunities and risks for resolution, including a mapping of other organizations which may already be involved in peacemaking efforts. Regardless of the mode of subsequent engagement — whether the deployment of one staff member on a short visit or the launch of an integrated planning process for the establishment of a Security Council-mandated SPM — it is imperative that all forms of engagement be grounded in a sound analysis of the conflict.

Conflict analyses should be conducted by a team from Headquarters composed of relevant desk officers and managers, together with representatives of relevant UN agencies, funds and programmes (from respective Headquarters or based in-country) and other Secretariat departments, when appropriate. A number of internal and external sources of information should

be consulted when conducting a conflict analysis, especially the United Nations Resident Coordinator's office and other locally based UN staff, civil society organizations and representatives of Member States.

The official *DPA Framework for Political Analysis* and the system-wide *Guidelines on UN Strategic Assessments* provide additional guidance in this area.

3.2. Mediation vs. other forms of third-party intervention

The conflict analysis will form the basis for the selection of a mode of engagement, of which mediation is just one option among other forms of good offices. In armed conflict, mediation is defined as “a political process in which the two or more parties to a violent conflict agree to the appointment of a third party to work impartially with the parties to help them talk through options and voluntarily reach an agreement to end the armed conflict and secure a just and sustainable peace.”¹ Specifically, mediation is helpful to:

- » Help parties in a dispute communicate and understand one another
- » Encourage parties to try and find common ground
- » Focus on the underlying or real interests of parties
- » Focus on both the future and the past
- » Help parties find creative solutions
- » Place the responsibility on the parties to decide the outcome
- » Assist parties to reach mutually satisfying agreements

¹ Centre for Humanitarian Dialogue, *A Guide to Mediation*, 2007.

Based on the above definition, the criteria to assess the suitability of mediation as a mode of engagement include:

- » The expressed willingness of the parties to explore a negotiated settlement
- » The ripeness of the conflict for resolution
- » Reasons for success or failure of ongoing or previous mediation engagements
- » The intent and interests of current and potential spoilers
- » The interests and influence of external players on a possible mediation process

Although mediation can be an excellent way to resolve a dispute, it is certainly not the only way. Mediation offers a number of advantages, but it also has its drawbacks. *In all cases, mediation requires a genuine willingness of parties to reach an agreement through dialogue.* Mediation may not be appropriate in cases where:

- » Parties are not genuinely committed to a resolution through dialogue or are only seeking to “buy time”
- » Parties are seeking third-party validation of their grievances and are looking to instrumentalize the mediation for other ends
- » Conflicts are “frozen”, i.e., where the fundamental strategic factors that caused the conflict in the first place have not changed

If the conflict analysis suggests that mediation has few chances of success, other forms of international engagement or good offices (ranging from diplomatic action to sanctions to commissions of enquiry) should be considered until minimal success conditions are

established. A mediator should not hesitate to walk away if parties are not committed to a mediated process. Ultimately, this ensures that the mediation is not used as a pretext to prolong the conflict.

The United Nations Secretariat may not always have the flexibility required to follow these best practices in the selection of mediation engagements. In some cases, Member States may mandate the United Nations Secretariat to establish a mediation process as a way of “managing” a situation rather than in the hope of “resolving” it. In these settings, mediation is useful to prevent further escalation as well as to address some of the consequences of the conflict, such as humanitarian needs. It is critical, however, to take this nuance into account when developing a mediation strategy.

3.3. The importance of strategic coordination with other actors

Peacemaking experience of the last decade has revealed the importance of strategic coordination among peacemaking actors in a particular conflict as well as, more generally, through established, long term partnerships. The UN is rarely the only international actor to get involved in a mediation process and should therefore pay particular attention to building a common vision and strategy with other players. At best, failure to align the UN strategy with the approaches of other actors could prevent the mediation initiative from benefiting from the respective comparative advantages of different actors. At worst, it could lead to the establishment of multiple and competing mediation tracks and open the door to “forum shopping”, whereby different parties chose the mediation process they believe will best suit their interests. The absence of coordination also prevents the emergence of

a clear vision for the resolution of a conflict, which is necessary for the rest of the international community and other stakeholders to support a process.

At the international level, relevant actors include the UN, regional organizations, subregional organizations, Member States, international NGOs and others. Regardless of the respective roles of the UN and other international organizations, the support and backing of relevant regional or subregional organizations will be essential to the success of any mediation process. In preparation for such partnerships, it is important to remain abreast of existing agreements between organizations, the evolving body of international norms developed by partners as well as the specific intervention procedures and structures used by partners.

Overall, the inability of the various organizations to agree on and implement a sound mediation strategy is the main cause of failure of the Malagasy process. Sanctions are now being considered: it is Madagascar who will pay the price for the failure of the process, sacrificed on the altar of inter-institutional disagreements.

— Tiébilé Dramé, Senior Political Adviser
for Madagascar, End of Assignment Report,
March 2010

At the local level, actors include the parties to a conflict as well as civil society organizations, including women's groups, traditional leaders, religious groups, private sector partners and other representatives of the population. A careful assessment will allow the identification of important local actors and their perspective and role in the conflict. Establishing and maintaining links with civil society during a mediation process will both help ensure the

buy-in of the population and create communication channels, which will facilitate the sharing of ideas and information.

In specific terms, strategic coordination with other actors implies:

- » Development of a joint vision of desirable outcomes of a mediation effort
- » Division of labour based on comparative advantages
- » Agreement on a set of key principles that need to be adhered to in the resolution, including a clear understanding of what outcomes would be acceptable to external actors
- » Agreement on basic modalities for the mediation effort, such as which organization will take the lead, broad process design, role of other actors in support of the mediation effort and desirable time frame
- » A vision of implementation requirements and potential supporting actors
- » Success criteria and exit strategy

Since conditions on the ground will change over time and the selected strategy might prove to be ineffective, it will be necessary to periodically revise the agreed approach.

The *AU-UN Mediation Partnerships Guidelines* provide an example of an agreed procedure for inter-institutional coordination in mediation.

3.4. Leadership of the mediation effort

Establishing clarity on which organization will lead the mediation effort is an essential condition for the success of any mediation endeavour involving multiple actors. Reaching agreement on

which organization should lead the mediation effort is, however, often extremely difficult. While some actors have argued for the primacy of static principles of division of labour such as “subsidiarity” (i.e., the organization closest to the conflict should take the lead), others have argued for a more flexible approach based on the comparative advantages of different organizations in each given situation. In this approach, comparative advantages are assessed against the following criteria:

- » Preferences of parties for a lead organization and perceptions of the population
- » Availability of resources (managerial, financial, human, technical, etc.) to carry out a sustained mediation effort
- » Unity of organizations’ member States behind the proposed approach
- » History of involvement, institutional knowledge of a situation and, if applicable, extent of existing presence on the ground
- » Capacity to assist with the implementation of a negotiated settlement

Given the variable nature of these criteria, comparative advantages will therefore be assessed differently in each situation. The UN offers a unique range of characteristics as a mediation entity which has often contributed to positioning the Organization as an effective mediator. These include:

- » Legitimacy, moral authority and credibility as an impartial actor derived from the Organization’s universal membership
- » Institutional experience in mediation and access to a pool of skilled mediators
- » Capacity to remain engaged throughout different

phases of a peace process, e.g., in the negotiations phase as a mediator or in the implementation phase through the deployment of peace operations and delivery of technical support programmes (electoral assistance, governance support, DDR, etc.)

- » Access to resources through the regular UN budget and extrabudgetary sources

As is the case for other international organizations, the UN also faces certain constraints. These include:

- » Variable levels of commitment and consensus to support a peace process among the membership, which may affect the availability of financial resources
- » Inability of a UN envoy to exercise leverage on her/his own, which can either reduce a UN mediator's credibility or boost her/his standing as an impartial actor
- » Rules and regulations, which constrain the flexibility of the Secretariat in making certain managerial decisions

The decision on which organization should take the lead must be made jointly at the highest level of the organizations. The nature of the partnership should be formally elaborated, for example, through a memorandum of understanding. This will contribute to certainty and predictability of the partnership and help prevent misunderstandings and disputes.

3.5. Deciding on a mode of engagement

Based on the results of the conflict analysis, the assessment of whether mediation is an appropriate form of intervention and the definition of the UN role in relation to other organizations, several options are available for engagement. These range from

an *indirect* (support) role assisting a process led by a local actor or another organization to *direct* (leading or co-leading) roles through the deployment of a UN mediation team.

The decision on a mode of engagement is made by the Secretary-General and/or head of department in consultation with regional divisions and partners — especially regional and subregional organizations — and can benefit from the expertise of technical support components such as the Mediation Support Unit (MSU).

The spectrum of options for engagement is broken down below. Although the subject of the present Guidelines is mediation engagements, other types of initiatives are included to ensure that all options are kept in mind when selecting a mode of engagement.

3.5.1. Indirect roles

Indirect, or support, roles can take many forms. In all cases, it is important to have a clear understanding of the value added of UN engagement and agree with partners on basic principles, strategy and parameters for international efforts in support of the resolution of a situation. It is also critical to define clearly what is expected in terms of support, and agree on modalities for its delivery.

UN teams deployed to support the efforts of other mediators — the Madagascar example

A political crisis broke out in Madagascar in early 2009 when a protest movement led by the then mayor of Antananarivo gained momentum and began to threaten the stability of the State. In response to a request from the authorities, the Secretary-General dispatched a small mediation support team composed of a Senior Political Adviser, one expert from the Mediation Standby Team and one Political Affairs Officer to assist a local mediation effort led by the Malagasy Council of Christian Churches. The role of the team was to advise the local mediators on strategy and process as well as to liaise with international actors. Through UNDP and under the guidance of the UN mediation support team, the UN also provided financial and clerical support for the process. When the crisis escalated and eventually led to what was described as an unconstitutional change of Government by the Southern African Development Community (SADC) and the African Union (AU), an international mediator was appointed by SADC and the UN team changed its focus to supporting the international mediation.

Similar forms of indirect engagements took place in 2008-2009 in Comoros and Kenya, where technical mediation support teams were deployed by the UN to support efforts led by mediators appointed by the African Union.

3.5.1.1. Diplomatic support for a process led by another organization

Indirect support to a mediation process may take the form of engagement from Headquarters, for example, a phone call to parties from the Secretary-General to express support for a negotiated outcome. Heads of UN regional offices, such as the United Nations Office for West Africa (UNOWA), have also often provided such support by participating in joint visits with lead regional entities and other mediators.

3.5.1.2. Technical support for a process led by another organization

Another form of indirect support is the deployment of mediation staff to assist a process led by another organization, for example,

by providing thematic or technical support, or to provide training to another mediation team or parties themselves. These options are more likely to be used earlier in a conflict resolution process when receptiveness to a wider UN role may be low.

3.5.1.3. Peace and development advisers and mediation advisers

An additional way to provide support to a local process is to deploy a peace and development adviser (PDA). PDAs are officers at the P4 or P5 level who are jointly deployed by DPA and the United Nations Development Programme (UNDP within the framework of the UNDP-DPA Joint Programme for Building National Capacities for Conflict Prevention. PDAs are most frequently dispatched where there is no UN political mission on the ground to assist resident coordinators and UN country teams in countries facing complex political challenges. Their role typically includes designing and implementing specific conflict prevention initiatives, supporting local dialogue and reconciliation processes and providing strategic analysis and advice to the Resident Coordinator and UN Headquarters.

In other cases, DPA has deployed Mediation Advisers to assist the efforts of another organization. These officers can be deployed in-country for short or longer periods.

Other deployments of this nature include the short-term deployment of Mediation Standby Team members to advise on the design, planning or conduct of partners' activities in support of a mediation effort.

3.5.2. Direct roles

The UN may be called to play a range of leading roles in conflict settings. Some may be initiated by the United Nations Secretariat under the general umbrella of the Secretary-General's good offices, while others are conducted under a specific mandate issued by UN legislative bodies.

3.5.2.1. Visits by UN envoys

In some cases, the UN chooses to play a modest, low-key role to assist the resolution of a conflict or help prevent escalation by sending a senior envoy on an official visit. Tasks may include informally consulting authorities and parties or even conducting shuttle diplomacy. This type of intervention is usually conducted by highly skilled senior diplomats, including the Under-Secretary-General for Political Affairs or Special Representatives of the Secretary-General (SRSGs) of regional offices, accompanied by small teams with established contacts in the country.

3.5.2.2. Deployment of a UN mediation team led by a senior representative of the Secretary-General

In other cases, the UN is called upon to lead a mediation effort. To this end, the Secretary-General appoints a representative, an envoy or a special adviser and a small team who deploy in-country on a continuous or intermittent basis to facilitate a mediation process. Special envoys are required to coordinate their activities with the leadership of other UN components on the ground as well as the special envoys of other organizations, where applicable. In some cases, such as for Somalia, the SRSG carries out the UN mediation functions with the support of an SPM established for that purpose.

3.5.2.3. Deployment of joint mediation operations with another organization

The increasing number of actors in international mediation of disputes has seen a corresponding increase in joint initiatives.

Joint operations can take many forms such as:

- » “Multi-hatting”, where a single envoy represents and reports to multiple organizations. This has been the case for the Darfur mediation, where a Joint Chief Mediator represented both the African Union (AU) and the UN
- » Integrated teams, where staff and envoys from different organizations work together as a single team. This was the case in the early days of the Darfur mediation as well as in Madagascar where a “Joint Mediation Team” was established to coordinate the work of envoys from the UN, AU, the Organisation internationale de la Francophonie (OIF) and the Southern African Development Community (SADC)

Joint mediation effort — the Darfur example

Mediation efforts for the Darfur conflict illustrate the various configuration options available for joint peacemaking endeavours. In a first phase, the African Union led a mediation effort culminating in the signature of the Darfur Peace Agreement in May 2006. Later that year, the mediation effort shifted to a co-mediation managed jointly by two Special Envoys appointed separately by the AU and the UN. The two mediators operated side by side as part of a joint team. In 2008, the mediation was reconfigured as a joint effort led by a single “Joint Chief Mediator” appointed by the UN and the AU and reporting to both organizations.

While these joint arrangements ensured that the support and experience of both organizations could be brought to bear positively on the peace process, the joint nature of the team also created additional reporting requirements and, at times, added pressure due to divergent views on the mediation strategy.

4. Developing a mediation strategy

Regardless of the specific role of the UN in relation to other partners, a mediation strategy will need to be developed prior to any type of intervention. The strategy development process should be led by the lead mediator based on the mediation mandate (if any), strategic guidance from the Secretary-General and support from DPA. In joint mediation efforts, this process should include representatives from the headquarters of relevant organizations to ensure strategic coherence across all levels of the organizations.

A mediation strategy should outline the broad approach to the resolution of the conflict, principles of process design, the role of local and international actors, schematic coordination architecture and an indication of post-agreement requirements to enable advance planning and identify broad support requirements. The latter should include an indication of the type of support structure that will need to be established.

A mediation strategy should be designed with an informed understanding of the potential challenges to the mediation process as well as views and expectations of local actors (parties and other stakeholders). Strategies need to be flexible and adapt to changed circumstances or events (e.g., elections), which may alter the actors or their positions. The development of the strategy itself can be an iterative process that evolves through consultations with actors and, often, trial and error. However, the management of a strategy, including its evolution, is the only way to ensure that the mediation remains in control of the process rather than reactive to events.

Questions a mediator might consider when designing a mediation strategy include:

- » Who are the parties and stakeholders in the conflict?
- » What do the parties want to achieve?
- » How does the mediation contact and remain in communication with parties?
- » How will other stakeholders (e.g., civil society groups) be involved?
- » How will spoilers be reached and managed?
- » How cohesive are parties?
- » What are parties' positions and real interests?
- » How should the public be involved in the process?
- » How can a gender perspective be incorporated in the mediation process and its substantive issues? What aspects of Security Council resolution 1325 can be promoted through the process?
- » What do parties expect of the mediator?

- » Is the mediation objective to manage, settle or resolve the conflict?
- » What can be done to enhance “ripeness”?
- » What are the minimum operating conditions for the mediation to proceed? Is a ceasefire needed?
- » Which actors can provide leverage in case of stalemate?
- » Is there a sanctions regime in place? What special challenges might the sanctions regime pose to the mediation effort? Do these challenges call for specific coordination with other UN bodies? If there is a targeted sanctions list, how do the criteria for listing and delisting intersect with the mediation effort?
- » How should the negotiations be sequenced?
- » What techniques and strategies are required for the consultation and negotiation phase of the mediation?
- » In what order should substantive issues be approached?
- » Is there a need for confidence-building measures?
- » How should the agreement be implemented?
- » How should the agreement be monitored at the political and operational level?
- » Is there a need for specific expertise to generate options for compromise?
- » What are the conditions of success for the mediation?

A complete *checklist* of key questions to consider in the development of a mediation strategy is available on the DPA Intranet.

4.1. Resources for strategy development

Strategy development resources include MSU, the Standby Team of Mediation Experts and other partners such as the specialized mediation institutions regrouped in the Mediation Support Network. These resources can be used in a variety of ways, as appropriate to the situation and to the role of the UN. In cases of joint operations, a strategy development workshop (methodology available [here](#)) could be organized with the facilitation of a mediation expert. One-on-one strategic sessions have also been organized for UN special envoys leading a mediation effort, as well as coaching sessions to develop skills or brainstorm on strategic issues.

The conduct of mediation itself is outside the scope of the present Guidelines. More information, including best practices identified in previous processes, is available in the *Manual for UN Mediators*. Other guidance materials on managing negotiation processes are available on the *UN Peacemaker* website.

4.2. Endorsement of a mediation strategy

Once developed, the mediation strategy should be communicated and endorsed at the highest level of the organizations involved. Some aspects of the strategy may need to remain confidential. The nature of the mediation is such that strategies may be highly personal and too sensitive for even the mediator to articulate fully, but it is important to share some sense of the strategy to enable other components of the organization to play their role in support of the process. This is necessary to facilitate “vertical” strategic coherence (within organizations) as well as “horizontal” coherence (among organizations). Coherence at all levels ensures

that all actors convey the same messages and complement each other's efforts at their various levels of intervention (e.g., leveraging the influence of allies at the local level as well as through diplomatic activity at Headquarters and in national capitals). A pragmatic approach should nonetheless be adopted to avoid overloading the endorsement process.

Within the UN, different situations may require the endorsement of a mediation strategy through different processes. If a mediation process is mostly of concern to DPA, the endorsement of the strategy by the relevant regional division, the head of department and, for high-profile cases, the Secretary-General's office, should suffice. If a mediation process has implications for other components of the UN system, the approach may call for endorsement at the level of the Secretary-General's Policy Committee or through the Executive Committee on Peace and Security (ECPS). More information is available in the *Policy Committee Instruction Manual*.

4.3. From strategy to operational plan

The mediation strategy provides the basis for conceptualizing the structure of a mediation team and corresponding substantive, administrative and logistical needs. This can be articulated in an operational plan, which focuses on *implementing* the strategy. While an overarching strategic plan provides overall direction and focus, with clearly formulated goals, objectives and strategies, the operational plan is a technical document that gives effect to the strategic plan. It must translate the strategic plan into activities, tasks and time frames, assign responsibility for action and identify what is required in terms of posts, expertise, logistics, equipment and funds.



Part II.

Roles and functions

Part II.

Roles and functions

5. The shifting scale of field-Headquarters responsibilities

Mediation engagements are complex undertakings with operational implications at both field and Headquarters levels. Ultimately, authority for the conduct of all activities rests with the UN Secretary-General. In practice, the oversight of operations is delegated to the Under-Secretary-General for Political Affairs. As such, UN mediators report *to* the Secretary-General *through* the Under-Secretary-General for Political Affairs.

In appointing a special envoy to represent the Organization in a mediation effort, the Secretary-General delegates a certain amount of authority to the field. On this basis, field managers and their teams are expected to lead in the development and management of engagement strategies while maintaining a constant dialogue with Headquarters, through DPA, as part of normal reporting practice.

The balance of responsibilities between Headquarters and the field shifts over time as operations are established. As detailed below, Headquarters is usually much more involved at the launch of operations. This involvement evolves as field capacity increases, until operations are sufficiently established to assume the strategic leadership. At all times, however, it is critical to

maintain a constant dialogue on strategy to ensure that all levels of the organization can play their role effectively in support of the process.

6. The Secretary-General

The Secretary-General can play a key role in UN-led or UN-supported mediation endeavours. “Equal parts diplomat, advocate, civil servant and CEO”,² the Secretary-General is a central figure who can bring particular situations to the attention of the United Nations Security Council on any matter which in his opinion may threaten the maintenance of international peace and security (Article 99 of the United Nations Charter). He may also engage the broader UN membership, conflict parties and other stakeholders directly or through “telephone diplomacy” and visits. As the Chief Administrative Officer of the UN, the Secretary-General also oversees the appointment of special envoys and the establishment of UN presences in the field. The Secretary-General’s moral authority carries great weight and should be leveraged, when appropriate, in support of a peace process.

7. The Under-Secretary-General for Political Affairs and the Assistant Secretaries-General for Political Affairs³

7.1. The Under-Secretary-General for Political Affairs

The Under-Secretary-General for Political Affairs, who is accountable to the Secretary-General, is responsible for all the activities

² See <http://www.un.org/sg/sgrole.shtml>.

³ See ST/SGB/2009/13 on the organization of the Department of Political Affairs.

of the Department of Political Affairs as well as its administration.

In the area of mediation, the Under-Secretary-General for Political Affairs:

- » Provides the Secretary-General with political advice
- » Oversees and provides political guidance and instructions to special envoys/representatives of the Secretary-General and other field representatives
- » Directs and manages, on behalf of the Secretary-General, goodwill, fact-finding and other missions
- » Undertakes, on behalf of the Secretary-General, diplomatic activities relating to the prevention, control and resolution of disputes, including preventive diplomacy, political mediation, peacemaking and post-conflict peacebuilding

The Under-Secretary-General is assisted by an office whose core functions, in the area of mediation, are as follows:

- » Advising the Under-Secretary-General on departmental policies and guidelines and dealing with specific substantive and administrative policy and management issues
- » Consulting, negotiating and coordinating with other departments, offices, funds and programmes
- » Coordinating and overseeing the Department's biennial budget and the annual budgets of missions
- » Liaising with the various divisions in resource mobilization for extrabudgetary activities
- » Managing media relations in coordination with the Office of the Spokesperson of the Secretary-General and the Department of Public Information
- » Advising on the availability of funds

7.2. Assistant Secretaries-General

The Under-Secretary-General for Political Affairs, in the performance of his or her activities, is assisted by two Assistant Secretaries-General. The Assistant Secretaries-General are accountable to the Under-Secretary-General and support the Under-Secretary-General in guiding and supervising the work of the Department.

In the area of mediation, the two Assistant Secretaries-General, with the support of their respective offices, have the following main responsibilities:

- » Providing leadership for the Department's conflict prevention and conflict management efforts, in particular through the development and implementation of integrated conflict prevention and conflict management strategies
- » Identifying opportunities for utilizing the Department's mediation and mediation support role
- » Developing effective working relationships with other UN departments, agencies, offices, funds and programmes on all issues relevant to the work of the Department
- » Providing leadership for maintaining strategic partnerships with international regional and subregional organizations, civil society organizations, academic institutions and think tanks

8. A departmental team effort: the respective roles of DPA components in mediation

The start-up phase of a mediation operation typically involves several components within DPA whose role may phase out or scale down as the operation is further established. Below is a general overview of the functions of different components during the start-up phase.

8.1. Regional divisions

Under the guidance and supervision of the Under-Secretary-General and Assistant Secretary-Generals, the country desks in the DPA regional divisions coordinate the start-up of operations in the initial phase and scale back to a support role as senior leaders are appointed and deployed to the field. Country desks are the main interlocutors for field managers. Their role is to direct operations and coordinate support functions of all types. As an operation is established, the desk's role evolves from that of an initiator, organizer and coordinator to that of a monitor and support coordinator.

Prior to the establishment of an operation, desks are responsible for monitoring potential sources of conflicts in all parts of the world and proposing, under the guidance of the two Assistant Secretaries-General and the regional divisions' leadership, possible UN interventions to prevent, contain or resolve conflicts. A mediation initiative is often initiated by the action of a desk on the basis of routine country monitoring.

At the beginning of a planning phase for a mediation operation, desks are responsible for the conduct of a conflict analysis and strategic coordination with other international actors.

Drawing on the support of specialized components such as the Mediation Support Unit (MSU) or the Electoral Assistance Division, desks are responsible for proposing a mode of engagement for the UN and seeking endorsement by senior UN leadership for the suggested approach.

During the planning phase, desk officers are responsible for engaging field teams or partners in the design of a mediation strategy and coordinating all aspects of implementation planning, including key decisions on support structures, recruitment and deployment of the mediation team.

During the latter parts of the start-up phase, desks are responsible for providing guidance to field teams on the establishment of critical systems related to reporting, coordination and support functions. At Headquarters level, desks are responsible for establishing coordination structures such as ITFs as well as to engage, when appropriate, with the Secretary-General's Policy Committee. Before agreements are signed, desks are also responsible for coordinating with the Office of Legal Affairs to ensure that agreements bearing the stamp of the UN are consistent with the core principles and obligations of the Organization, as well as with any other UN component that may be called upon to support provisions of an agreement (e.g., the Electoral Assistance Division).

8.2. The Policy and Mediation Division and the Mediation Support Unit

In the area of mediation, the Policy and Mediation Division (PMD) provides specialized services to meet the growing demand for professional, cross-cutting support to “good offices” activities, including preventive diplomacy and the formal mediation of

disputes. This includes expert advice, best practices and knowledge management on mediation-related activities worldwide. It also assists ongoing mediation efforts with country/region-specific operational support as well as institutional and capacity-building activities. PMD provides these services to the UN as a whole as well as to regional organizations and other peacemaking bodies.

To this end, a number of mediation resources have been mobilized and are available to mediation teams. These include:

- » An MSU, which provides mediation support services to the rest of the UN system and partner organizations
- » A Standby Team of Mediation Experts who can be deployed anywhere within 72 hours
- » Rosters of mediation and thematic experts for long-term deployments to advise on peace processes, provide training, assist with the drafting of peace agreements and provide other mediation support services as required
- » Body of guidance and lessons learned materials to inform decision-making
- » A team of specialized analysts to provide strategic and process-design advice during and after the start-up phase, and to collect and analyse lessons learned from operations
- » A wide range of partnerships with specialized mediation institutions whose expertise can be called upon as needed

As a service provider, MSU *responds* to requests from desks and mediation teams. It is the responsibility of desks and mediation teams, as the leadership of operations, to draw on this

support. Requests can be transmitted through the office of the Director of the Division.

8.3. The Electoral Assistance Division

The Electoral Assistance Division serves as the lead unit for UN electoral assistance. In the area of mediation, the Electoral Assistance Division plays a central role in assessing needs for electoral assistance that may result from peace agreements and in the coordination of support during the implementation phase. In particular, the Electoral Assistance Division is responsible for:

- » Advising and assisting the Under-Secretary-General for Political Affairs in his or her capacity as the focal point for UN electoral assistance activities
- » Reviewing requests for electoral assistance programmes and advising on their implementation
- » Assisting the focal point with coordination within and outside the UN system and ensuring system-wide coherence and consistency in responding to requests from Member States for electoral assistance
- » Providing support and coordination for the activities of international observers
- » Undertaking needs-assessment missions to determine the specific needs of a country requesting electoral assistance
- » Developing and disseminating, jointly or in close cooperation with UNDP and others, UN electoral policies
- » Developing and maintaining a roster of international experts who could provide technical assistance, as well as assistance in the verification of electoral processes

- » Building and maintaining the UN system's electoral institutional memory
- » Maintaining contact with regional and other inter-governmental organizations to ensure appropriate working arrangements with them

8.4. The Executive Office

The Executive Office is the administrative and financial arm of DPA. Once an operation is authorized by the head of the Department and upon request from regional divisions, the Executive Office is responsible for processing travel arrangements, hiring staff and administering operational funding for requirements such as transport or rental of meeting rooms and office equipment. For longer-term field deployments, the Executive Office may rely on the administrative support of UNDP or the Department of Field Support (DFS) as detailed in *section 12* on administrative, financial and logistical support structures.

For mediation operations, the Executive Office can offer the following services:

Finance and budget:

- » Provide advice on financial rules, policies and procedures
- » Review project proposals
- » Provide or assist with the preparation of cost estimates
- » Request allotment and redeployment of funds
- » Monitor expenditures and make necessary adjustments
- » Provide information on contributions and expenditures to the donor relationship focal point, senior management and project managers

- » Process requests for travel, travel claims, contracts for consultants, financial authorizations, requests for payment and follow-up actions
- » Prepare budget for DPA, DPA-administered SPMs and activities funded under the Secretary-General's unforeseen and extraordinary expenses account
- » Brief mediators on procedures

Human resources:

- » Provide advice on staff rules and policies
- » Issue Temporary Vacancy Announcements or Job Openings in Inspira
- » Administer recruitment processes
- » Administer staff recruited at Headquarters and a limited number of staff in certain field locations from appointment, deployment to separation and repatriation
- » Process extension of contracts

Administration and information technology:

- » Assist with or issue grounds pass and travel document (UN laissez-passer, Travel Certificate, visa application)
- » Clear and submit requests for mobile phones, Blackberry devices and Citrix licences
- » Keep a record of equipment issued and cost recovery
- » Keep a record of DPA, SPMs and DPA field offices' inventories

Figure 2
At a glance: lead and support components

PHASE		TASK	LEAD COMPONENT	SUPPORT COMPONENT
STRATEGIC PLANNING	Assessment and decision-making	Monitoring of conflicts	RD	PPU
		Conflict analysis	RD	
		Assessment of engagement options	EOSG, USG, ASG	RD, MSU
		Liaison and coordination with other international actors, including selection of lead mediator	EOSG, USG, ASG	RD
		Determination of mode of UN engagement	EOSG, USG, ASG	RD, MSU
	Strategy development	Development of mediation strategy	Lead mediator, RD	MSU, Partners
		Endorsement of mediation strategy	EOSG, USG, ASG	RD
OPERATIONAL PLANNING		Identification of resources required to support strategy (staff functions, operational needs, security)	Lead mediator, RD, MSU	EO, DSS
		Cost estimates and budgeting	EO	RD
		Identification of sources of funding	EO/FP for donor relations	
		Decision on support structure	Mediation team, EO, RD	
		Identification of suitable candidates, including envoys	EOSG, OUSG, RD	MSU
		Selection of candidates, including envoys	EOSG, OUSG, RD	MSU
		Issuance of contracts	EO	
		In-briefing of staff	RD	MSU
(continues)		Travel arrangements	EO	RD

Figure 2
At a glance: lead and support components

OPERATIONAL PLANNING (continued)	Local transport, communications and IT equipment, office facilities and other operational requirements	Support structure	EO
	Arrival in-country with authorities and partners	RD	
COORDINATION AND COMMUNICATION SYSTEMS	Design and establishment of coordination architecture at local and regional level	Mediation team	RD, MSU
	Establishment of reporting system	Mediation team, RD	
	Communications strategy	Mediation team, OUSG, RD	MSU
	Monitoring of development and liaison with OUSG/EOSG	RD	
	Strategic guidance, including revision of mediation strategy	EOSG, OUSG, RD	MSU
	Liaison with Member States	EOSG, OUSG, RD	
BEYOND THE START-UP PHASE	Planning for the long term and initiating a shift to long-term funding system	EOSG, OUSG, RD	PMD, EO
	Lesson learning and capture of institutional experience	RD, PMD	

RD = regional division

9. Other UN partners

9.1. The Department of Peacekeeping Operations

The mission of the Department of Peacekeeping Operations (DPKO) is to plan, prepare, manage and direct UN peacekeeping operations so that they can effectively fulfil their mandates under the overall authority of the Security Council and the General Assembly, and under the command vested in the Secretary-General.

As UN peacekeeping operations are often established to help implement the provisions of a peace agreement mediated by DPA, it is of critical importance that DPKO be involved as early as possible in any peace agreement whose implementation may require the deployment of a peacekeeping operation. In these cases, DPKO can advise on the feasibility of commitments and provide expert inputs into draft agreements in order to facilitate implementation down the line.

If a mediation operation is launched in a country with a peacekeeping operation, DPKO may become the lead entity for the mediation process, as is the case for Darfur.

DPKO is also a lead entity for the UN system in a number of thematic areas, such as military expertise and policing, and can be a resource for DPA-led mediation operations.

9.2. The Department of Field Support

The Department of Field Support (DFS) provides dedicated support to *peacekeeping field missions* and *political field missions* in the areas of finance, logistics, information and communications technology (ICT), human resources and general administration.

It does this, for example, through:

- » Supporting leadership appointments, including generating lists of candidates
- » Helping field missions prepare their budgets and representing the interests of missions in front of UN intergovernmental committees
- » Providing guidance and policies for recruiting staff to field missions
- » Ensuring field missions have the necessary technology and communication tools to operate on the ground
- » Enabling the provision of transport, rations and other supplies essential to field operations
- » Working with Member States and the intergovernmental process of the UN to represent the interests of the field as well as coordinate reimbursements to troop and police contributors for equipment and self-sustainment

In special political missions (SPMs) and other DPA-led operations supported by DFS, the services provided by DFS are covered by the forthcoming “service level agreement” between DPA and DFS. The principles governing accountability and responsibility for support services in DPA-led operations supported by DFS are articulated in the *Policy on Delegated Authority in UN Field Missions led by DPA and supported by DFS*.

9.3. The Office of Legal Affairs

The Office of Legal Affairs (OLA) provides a unified central legal service for the Secretariat and the principal and other organs of the UN. OLA has often been involved in supporting field

operations — including mediation endeavours — with legal expertise. For example, mediators have sought OLA assistance for the review of draft peace agreements to ensure consistency with core UN principles and obligations. It has become standard practice for UN envoys to cross-check draft agreements with OLA before signing as witnesses or on behalf of the UN.

9.4. The Department of Management

The Department of Management (DM), composed of, among others, the Office of Human Resources Management (OHRM) and the Office of Programme Planning, Budget and Accounts (OPPBA), provides services to backstop the day-to-day operations of the global United Nations Secretariat. Its mission is to formulate policies and procedures — for implementation by individual departments' Executive Offices — and provide strategic guidance, direction and support in three broad management areas:

- » Human resources
- » Finance and budget
- » Central support services

In the area of mediation, the Department of Management is involved in the recruitment of consultants and staff and the approval of funding for operations. The Executive Office is the DPA interface with the Department of Management.

9.5. UN agencies, funds and programmes and the UN resident coordinator system

UN agencies, funds and programmes are important local and global actors who are often critical partners in the success of a mediation effort. Leveraging their presence in many countries where DPA has

no foothold, UN agencies, funds and programmes — organized as country teams whose activities are harmonized and coordinated by resident coordinators — can support mediation processes by providing useful information on the situation on the ground and offering ad hoc logistics support. Coordination with UN agencies, funds and programmes is discussed in further detail in [section 14](#) below.

UNDP often plays a key role in the implementation of mediated agreements, for example, by supporting electoral operations or governance reforms. UNDP is also the partner of DPA for the deployment of peace and development advisers, who, as discussed above, are one option for UN engagement. Finally, UN mediation operations have also benefited from the support services of UNDP country offices, as explained in [section 12](#) below.

10. Non-UN partners

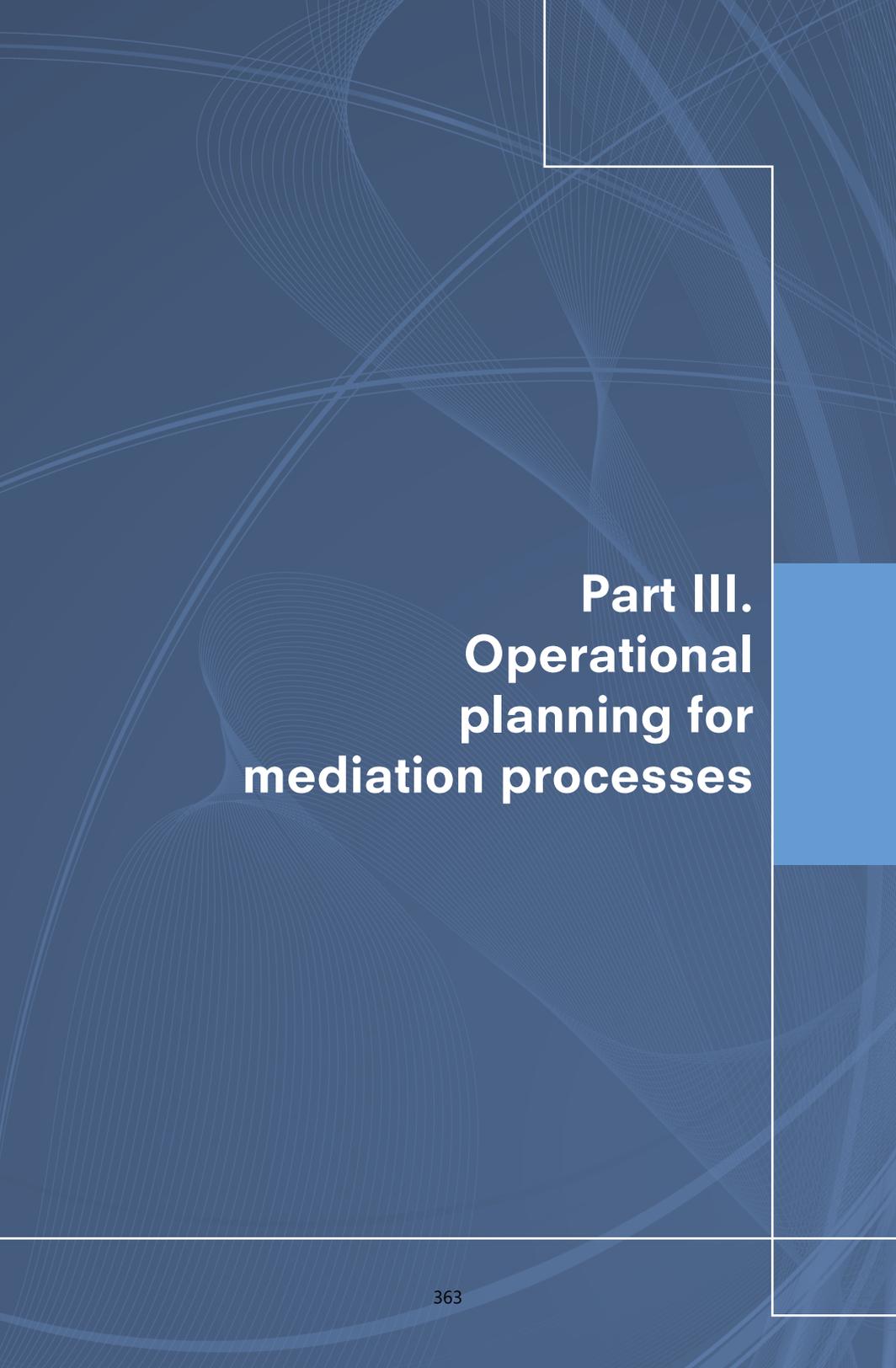
Non-UN partners in the area of mediation include subregional and regional organizations, Member States, specialized institutions, local actors and prominent individuals.

In recent years, regional and subregional organizations have been playing an increasingly important role in conflict prevention, mediation and conflict management more generally. Some have begun to establish specialized mediation support structures, such as groups of elders.

Although Member States always play a central role in UN activities, some are particularly active in the area of mediation. These Member States have both provided support and led mediation efforts in various parts of the world.

Specialized institutions include mediation-focused NGOs and think tanks. While some concentrate on research and training, others are also involved in mediation and mediation support activities.

Finally, local partners are also key actors in any mediation process. Some act as local mediators (with or without support from the international community), or can contribute through the provision of local knowledge and transmission of messages to the wider population. Interacting with local partners is essential to ensure that a mediation process remains connected to the concerns of stakeholders who may not be directly represented at the negotiation table.



**Part III.
Operational
planning for
mediation processes**

Part III.

Operational planning for mediation processes

“The bottom line for effective mediation is logistics. Credibility and momentum are key: if you act tomorrow, it’s too late.”

— Said Djinnit, Special Representative
of the Secretary-General for West Africa,
Vision for UNOWA, 2010

11. Financial resources available for start-up

A number of options are available to finance mediation start-up. The Executive Office, MSU and the DPA Donor Relations Focal Point can advise on the most appropriate sources of funding for each situation. This section provides an overview of the various options.

11.1. Extrabudgetary funding

In recent years, most mediation and crisis response efforts have been funded through extrabudgetary resources (voluntary contributions from Member States) obtained through the Department’s annual funding appeal. Emergency windows have been established, including fast-track procedures, which facilitate access to

funding for operational start-up. Other contributions earmarked for specific projects or regions can also be used for mediation efforts. Requests for rapid response funding are reviewed and approved by the Under-Secretary-General for Political Affairs and do not require the approval of the extrabudgetary committee.

Rapid response funding — the DRC example

The signing of the Goma Acte d'Engagement in early 2008 between the Government of the DRC and armed groups in the Kivus raised hopes that the long-running conflict might finally be ending. Drift and delays in implementation, however, soon led to disenchantment and a resumption of hostilities in July 2008. By October 2008, in addition to a deep humanitarian crisis, regional animosities were growing to dangerous heights. It was with this sense of urgency that the Secretary-General appointed the former President of Nigeria H.E. General Olusegun Obasanjo as his Special Envoy (SESG) for the Great Lakes, on 7 November 2008. Start-up costs for the implementation of the mandate of the SESG (e.g., travel budget or deployment of a senior political affairs officer to act as the Special Assistant of the SESG) were funded through the DPA extrabudgetary rapid response account (\$330,000). Throughout the arc of his engagement, the SESG was able to draw on the expertise and facilities provided by this funding structure.

11.2. Secretary-General's unforeseen and extraordinary expenses account

Resources may also be available through the Secretary-General's unforeseen and extraordinary expenses account. This is a more formal form of funding and its approval is subject to the authorization of the Secretary-General. Requests for access to this source of funding can be coordinated by the DPA Executive Office.

11.3. The Peacebuilding Fund

The Secretary-General's PBF was established by Member States in 2005 at the same time as the Peacebuilding Commission. The fund is managed by the Peacebuilding Support Office (PBSO). The PBF was designed to fund activities that could have a catalytic impact on a peace process or to prevent a lapse or relapse into conflict. It can fill strategic peacebuilding funding gaps when needed. The PBF supports, *inter alia*, "activities designed to respond to imminent threats to [a] peace process, support for the implementation of peace agreements and political dialogue".

The PBF offers two types of funding: an Immediate Response Facility, designed for smaller amounts and rapid decision-making and dispersal, and the Peacebuilding Response Facility, for longer-term and more comprehensive funding portfolios. While DPA and its political missions are not currently eligible for PBF funding, many UN institutional partners are and can manage funds on behalf of Governments or non-government actors implementing peacebuilding projects. SESGs/SRSGs (in mission settings) and resident coordinators (in non-mission settings) co-chair with the Government an inclusive Joint Steering Committee empowered to decide how to spend the funds. Political dialogue and mediation funding has been utilized, for example, to finance the Economic Community of West African States' (ECOWAS) mediation activities in Guinea-Conakry and Côte d'Ivoire, and a Government-led national dialogue process in the Central African Republic. Requests for PBF funding should be submitted through UN leaders in the field. Further guidance is available on the PBF website (www.unpbf.org).

11.4. Regular budget

If and when a Special Political Mission (SPM) is authorized, funding will be provided through the established SPM budgetary process based on legislative approval. While this ensures the sustainability of operations, this facility is rarely available at start-up. When a crisis occurs in a context where there is a UN mission, however, both logistical and financial support from the mission can be authorized directly to cover needs until additional legislative approval is secured.

Funding through the regular budget — the United Nations Political Office for Somalia (UNPOS) example

The UN Political Office for Somalia (UNPOS) was established as a political mission in 1995 to advance the cause of peace and reconciliation in Somalia through contacts with local and national leaders, civic organizations and the States and organizations involved in the resolution of the Somali conflict. Supported and overseen by DPA, the Office is headed by a Special Representative of the Secretary-General (SRSG) who closely monitors the situation and provides the Secretary-General with periodic briefings and written reports for the Security Council. UNPOS also provides political guidance to the UN agencies, funds and programmes that constitute the United Nations Country Team for Somalia. UNPOS is also supporting initiatives by countries in the region to promote peace and national reconciliation in Somalia, including efforts by the Government of Djibouti that led to the formation of the Transitional National Government (TNG) of Somalia in 2000. From 2002 to 2004, UNPOS supported the Somali National Reconciliation Conference under the auspices of the Intergovernmental Authority on Development (IGAD), which resulted in the formation of the current Transitional Federal Government (TFG). Since then, UNPOS has continued to accompany the Somali transition through a range of political activities including support to the constitutional review process.

As a special political mission (SPM), UNPOS is funded through the regular UN budget per existing regulations. Most SPMs have extensive good offices and mediation functions, and as such constitute another model for the management of UN mediation and mediation support activities. While the establishment of an SPM can be a long process due to the necessity to obtain a mandate from the United Nations Security Council and the lengthy funding approval cycle of UN budgetary bodies, SPMs also offer more robust support arrangements and a longer-term horizon than operations funded through extrabudgetary sources.

11.5. Overview of procedures to secure funding

11.5.1. Budgeting

A common challenge in past operations has been the finalization of operational budgets. This has at times caused delays in obtaining funding despite the urgent need to initiate activities. Budgets are based on assumptions about the evolution of the political situation and the mediation strategy and operational plan, which outline the *needs* of the engagement in terms of support. Budget decisions should be made on the basis of available information and take into account the myriad of support needs for a mediation operation. As outlined in the mediation *start-up budget template*, the main categories of expenses are the following:

- » Staffing (international and national)
- » Travel & DSA
- » Office facilities
- » Operational expenses (meeting rooms, hospitality, etc.)
- » Communications & IT
- » Local transport

Examples of operational budgets for mediation start-up are available on the DPA Intranet.

11.5.2. Identifying a source of funding and funding management

To identify the most appropriate source of funding, regional divisions can consult the Executive Office and the DPA Donor Relations Focal Point.

The basic procedure to secure funding for mediation start-up involves the following steps:

1. Project formulation;
2. Preparation of a project budget or cost estimate;
3. Submission of the project proposal and funding request to the Under-Secretary-General, if using extrabudgetary rapid response funding. In these cases, requesters should use the *Rapid Response Template for Cluster I* which is processed by the Donor Relations Focal Point.
4. Approval by the Under-Secretary-General; and
5. Request (by EO) for approval of allotment from OPPBA.

Guidance, procedures and templates for requesting funding from the DPA Extrabudgetary Trust Fund are available in the following documents:

- I. Policy Directive: DPA Extrabudgetary Resources Management (overview)
- II. DPA Resource Mobilization Guideline (fundraising)
- III. DPA Trust Fund Management Guideline (financial)
- IV. DPA Project Management Guideline (operational)

Rapid response funding — the Kyrgyzstan example

In April 2010, violent protests in Kyrgyzstan led to the resignation of the President, dissolution of the Parliament and establishment of a transitional Government. In June 2010, inter-ethnic violence broke out in the south of the country resulting in the death of hundreds of civilians. At the request of the United Nations Regional Centre for Preventive Diplomacy for Central Asia, MSU put together a rapid response package using the DPA extrabudgetary rapid response funds. The package included the deployment of a Senior Reconciliation Adviser for three months, and the deployment of a two-member DPA team, together with a Mediation Standby Team expert, to Bishkek for a week to work with the United Nations Country Team to develop a strategy in support of the reconciliation process.

12. Staffing mediation teams

12.1. Defining staff requirements

The human resource requirements of a mediation process are first and foremost driven by the situation on the ground, the adopted strategy and the particular needs of the operation, such as seniority of representatives or support requirements. The size and composition of a team is also likely to change over time in response to the evolution of the process. In the initial stages, a small team to support high-paced shuttle consultations with parties and plan for future engagement may be all that is required. When negotiations begin or when a presence must be established in different locations, staff requirements may change to include additional representational, analytical and support staff.

12.2. Functions in a mediation team

Regardless of the specific institutional arrangements underpinning the composition and leadership of a mediation effort,

a mediation team will need to be established during the start-up phase to perform the range of tasks required in a mediation effort. While in the past high-profile mediators have often been deployed on their own or with the assistance of one or two officers, experience has shown that the complexity of contemporary conflicts, including the number of actors, depth of issues to be resolved, extent of consultation requirements and coordination and support needs, warrant the mobilization of a multi-disciplinary team combining a range of specialized capabilities, including support specialists in the areas of administration, finance and logistics.

The team will play coordinating, monitoring, analytical, advisory and liaison roles and will support the lead mediator in mediating and facilitating dialogue. The team members must have mediation, diplomatic and organizational expertise to be able to provide support in all areas where a mediator is called upon to play a role. This includes the management of the mediation process, which requires expertise in areas such as process design, mediation strategy development, public information and relevant thematic subjects, as well as managing interactions with the international community, which requires experience with diplomacy and international coordination.

“The maxim remains that one is only as good as one’s team.”

— Staffan de Mistura,
UNAMI End of Assignment Report, 2009

The following is an indicative list of functions that are often required. The size of the team will depend on the situation. There is no standard configuration for a mediation team: the key decision-making principle is that *form should follow function*.

12.2.1. Leadership and management

Exercised by the lead mediator, leadership involves providing strategic direction to a mediation effort, high-level representation and strategic coordination with other actors.

The following criteria should be used to select the lead mediator:

- » A high level of experience and competence in mediation
- » Credibility with the parties in conflict
- » Knowledge of the country, region and parties in conflict
- » Proficiency in at least one of the languages spoken by the parties
- » Availability for full-time deployment for at least six months
- » Commitment to the values and principles of the lead organization, including respect for democratic norms, human rights and gender equity
- » Personal attributes of a good peacemaker, including empathy, analytical ability, excellent communication and facilitation skills and excellent political judgement and problem-solving skills
- » Ability to lead and manage a mediation team

In large teams, a lead mediator may be assisted by a deputy or chief-of-staff whose role is to coordinate the activities of the team and provide internal managerial oversight while the lead mediator is focused on directing the mediation effort.

In joint operations, the organization designated as the lead mediating body must appoint the lead mediator.

As detailed in the next section, mediators and senior leaders can be identified through the MSU Mediation Roster and the Department of Field Support (DFS) Senior Leadership Appointments Unit.

The terms of reference for the lead mediator should be put in writing and include reporting lines and modalities. *Sample terms of reference* for Lead Mediators, Chiefs-of-Staff, Chiefs-of-Operations and Mediation Support Officers are available on the DPA Intranet.

12.2.2. Technical expertise

Experts are often called upon to provide advice to the lead mediator or to the parties on technical aspects of the mediation process. Typical areas of expertise include process design, power-sharing, wealth-sharing (natural resources, fiscal, etc.), transitional justice, security, constitution-making electoral systems and gender.⁴ Technical experts can advise on options for resolution using comparative experience from other countries as well as a deep understanding of different approaches in their areas of expertise. They can also provide training when appropriate.

⁴ Gender, being a "cross-cutting" issue, should be addressed within all other areas of expertise. Often gender expertise is requested to develop processes and structures which are aimed at facilitating women's engagement in a mediation process and better integration of gender analysis.

The role of thematic experts — contribution of a gender adviser to the northern Uganda peace talks

During the 2008 negotiations on northern Uganda mediated by Riek Machar, Vice-President of Southern Sudan, with the support of Joaquim Chissano, Special Envoy of the UN Secretary-General, a gender adviser was deployed by UNIFEM to promote gender sensitivity in this effort. The Adviser's contribution helped ensure that adequate attention was paid to the implementation of Security Council resolution 1325, especially in the areas of DDR, justice and accountability mechanisms and monitoring of the ceasefire. While Special Envoy Chissano met with women peace activists from the start of his tenure as facilitator, the arrival of the Gender Adviser gave the women's groups a dedicated focal point to work with and someone who was able to assist them in formulating their concerns into a comprehensive agenda. Women were granted observer status and also an opportunity to make their views known to the parties. These views were published in what became known as the "Women's Protocol". Most of their concerns were reflected in the draft agreements, which are among the most gender-sensitive peace agreements to date.

12.2.3. Process coordination and drafting

In some cases, a mediation strategy will rely on labour-intensive processes involving consultations with large groups of stakeholders or the establishment of parallel negotiation tracks using thematic subcommittees. Process coordination involves managing the practical and substantive aspects of such processes, from reserving meeting rooms to consolidating various texts. These functions are often performed by Political Affairs Officers.

12.2.4. Outreach

A discreet but important function of the mediation team is to generate political support for the process. This requires extensive contacts with international partners as well as national actors such as Government officials or civil society actors. In some cases, the mediation team might also seek to cultivate support for the process among diaspora groups.

12.2.5. Reporting

Organizations expect teams deployed to the field to report regularly on progress. This is necessary to allow headquarters to complement field-level efforts with initiatives at the headquarters level (“vertical” strategic coherence) as well as to report to donors and other global stakeholders. There is no standard reporting frequency: it is generally accepted that reporting should take place as needed. More information on reporting to headquarters is available in section 15 on reporting.

12.2.6. Information gathering and analysis

The successful practice of mediation requires the maintenance of constant situational awareness, including developments on the ground, shifting positions in the balance of power, evolving popular perceptions, emergence of new actors and knowledge of actors’ backgrounds. Information about these issues is available through various means, such as contacts with local and regional actors, media monitoring and direct observation. In some cases, Member States can provide additional information. The management of information designed for the purposes of the mediation is, however, a responsibility of the mediation team. In addition to gathering information, teams must also ensure that data is assessed, interpreted, analysed and converted into useful information that can help the mediation team achieve its objectives.

12.2.7. Media management

Mediation initiatives tend to attract extensive local and international media attention. In turn, media reporting on progress in the mediation can have a serious impact (both positive and

negative) on the success of efforts by influencing the perceptions of parties and the population. Given the risks and opportunities involved, relations with the media should be managed carefully and on the basis of a communications strategy which mirrors the mediation strategy. A number of communication resources may also be required in different contexts, such as the appointment of a spokesperson. In all cases, a successful communication strategy will require a clear articulation of objectives, key messages and a targeted media monitoring system to assess — and respond to — the evolution of perceptions.

The management of public information systems is also helpful to understand the key interests and concerns of the population, for example, through public opinion polling. This ensures that issues being negotiated by the parties respond to the concerns of all stakeholders.

12.2.8. Support

Support is a critical aspect that is often overlooked when planning a mediation process. Support requirements will vary with the size of teams and the nature of the mediation process. Large teams and processes may require support in the areas of personnel management, finance, transport, logistics, facilities management, conferences services, protocol or secretarial assistance. In all cases, support requirements will be determined by the complexity of the process, local availability of resources and extent of needs.

12.3. Types of appointment in a mediation team

The type of contracts used in mediation start-up is often contingent on budgetary constraints and time pressures. Typically,

the categories of personnel summarized below are involved in a mediation operation:

12.3.1. Special envoys, special advisers
and special representatives

Senior staff and mediators are appointed directly by the Secretary-General either as regular staff or on a “When Actually Employed” (WAE) basis. The terms of appointment are made on the basis of consultations between DPA and the Office of the Secretary-General. Once a decision is made, the DPA Executive Office coordinates with OHRM and EOSG on the appointment of senior executives.

Experience has shown that the administrative status of mediators can have a serious impact on their effectiveness on the ground. Mediators hired as “consultants”, for example, may not enjoy the credibility and weight of officials appointed formally as special envoys or representatives of the Secretary-General. They are also ineligible for some UN privileges, such as immunities and official travel documents, and can be subject to restrictions in their contacts with the media. Similarly, the official titles given to envoys can have serious political implications. These aspects should be factored into the decision-making process in line with the expected role of the UN officials.

The following table summarizes the types of senior appointments used in the past and includes examples. Senior appointments are made on the basis of a number of considerations which require flexibility in typologies to adapt to all circumstances. While the categories and definitions outlined in the table do reflect existing practice, they should nonetheless be considered only as indicative and subject to change based on circumstances.

Figure 3
At a glance: type of senior appointments
in mediation engagements

	Title	Role	Level	Remarks	Examples
REPRESENTATIVES	Special Representative of the Secretary-General (SRSG)	<ul style="list-style-type: none"> » Head of peacekeeping/ political missions » Good offices 	ASG/USG	<ul style="list-style-type: none"> » Resident in the region » Long-term appointment 	Staffan de Mistura SRSG for Afghanistan and Head of UNAMA 1 March 2010 [S/2010/48] [S/2010/47]
	Representative of the Secretary-General (RSG)	<ul style="list-style-type: none"> » Head of peacekeeping/ political missions » Good offices 	Director	<ul style="list-style-type: none"> » Resident in the region » Long-term appointment 	Karin Landgren RSG in Nepal and Head of UNMIN 3 February 2009 [S/2009/58] [S/2009/57]
	Executive Representative of the Secretary-General (ERSG)	<ul style="list-style-type: none"> » Head of an UN Integrated Office » Representative of UNDP and UN Resident Coordinator and Humanitarian Coordinator » Ensure a cohesive and coordinated approach within the UN system 	ASG/USG		Michael von der Schulenburg ERSG for the UN Integrated Peacebuilding Office in Sierra Leone 8 January 2009 [S/2009/18] [S/2009/17]
	High Representative of the Secretary-General (HRSG)	<ul style="list-style-type: none"> » Lead a dialogue » Represent a group of countries » Verify and guide electoral processes » Monitor activities of organizations or agencies involved in civilian aspects of a peace settlement 	ASG/USG		Cheick Sidi Diarra HRSG for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States 22 January 2008
	Personal Representative of the Secretary-General (PRSG)	<ul style="list-style-type: none"> » Represent the Secretary-General in specific international conferences, meetings or negotiations 	Any level		Norman Girvan PRSG on the Border Controversy between Guyana and Venezuela 20 April 2010

Figure 3
At a glance: type of senior appointments
in mediation engagements

	Title	Role	Level	Remarks	Examples
ENVOYS	Personal Envoy of the Secretary-General (PESG)	» Undertake a mission in pursuance of an initiative of the Secretary-General without a specific mandate of the Security Council or General Assembly	Any level		Christopher Ross PESG for Western Sahara 6 January 2009 [S/2009/19] [S/2009/20]
	Special Envoy of the Secretary-General (SESG)	» Undertake a mission in conjunction of peace-keeping, peace-building or peace-making efforts on matters of which the UNSC and UNGA are seized » Good offices	ASG/USG	» Shorter period than Special Representative » Not resident in the region in most cases	Olusegun Obasanjo SESG on the Great Lakes Region of Africa 9 December 2008
	Envoy of the Secretary-General (ESG)	» Undertake a mission in conjunction of peace-keeping, peace-building or peace-making efforts » Good offices	Director	» Shorter period than Special Representative » Not resident in the region in most cases	Robert H. Serry ESG for the Middle East Quartet 4 November 2007 [S/2007/690] [S/2007/691]

Source: UN Terminology and Definitions, Draft for DPA, PPU/MSU Guidance Note on Special Political Missions.

12.3.2. Existing Headquarters staff

DPA can deploy existing staff members from Headquarters to initiate a rapid response to a crisis, including early preventive action. Staff can also be called upon from other UN departments, UN field missions or UN agencies, funds and programmes. They can be deployed to provide immediate support for periods ranging from a few days to a few months. For longer-term support

— funding permitting — consideration should be given to recruiting new staff members.

12.3.3. Recruitment of staff on temporary contracts

Temporary staff members are those recruited on contracts of less than one year. Given the nature of mediation operations and the funding arrangements of DPA, this is the most common type of contract. Recruitment for temporary positions requires the issuance of a Temporary Vacancy Announcement (TVA). The recruitment process is generally shorter than formal recruitment processes for regular budget posts. However, associated entitlements, as well as the short-term nature of contracts have, at times, discouraged qualified candidates from applying.

12.3.4. Recruitment of staff on regular contracts

When a position is expected to last for more than one year, a Job Opening (JO, formerly known as a Vacancy Announcement) can be issued in Inspira. For executive positions, an advertisement may also be placed in prominent publications. If the position is funded through extrabudgetary resources, regulations require that funding be secured for a minimum of 18 months before initiating a regular recruitment process. The recruitment process can take six months or more and is not suitable for rapid response.

12.3.5. Consultants

Consultants can be hired relatively quickly to provide a wide range of support services. Consultants are recruited at different levels. However, consultants are not considered UN staff and cannot perform certain functions, among them, supervisory and

representational functions. Consultants, once engaged, are not provided with most benefits that are available to staff members. Consultants are also not eligible for UN positions at a professional or equivalent level in field services for a period of six months after their consultancy. *Tips for hiring external consultants and experts* are available on the DPA Intranet.

12.3.6. National staff and national consultants or individual contractors

National staff, consultants and individual contractors are rarely hired outside the framework of a team led by international staff. They are usually hired to provide support to other project personnel dispatched by DPA. National staff in mediation operations includes, for example, administrative assistants, translators and drivers.

12.3.7. Standby Team experts

The Mediation Support Unit (MSU), in cooperation with the Norwegian Refugee Council, maintains a team of seven standby experts in various fields of expertise that can be deployed at short notice. They are often called upon to provide short-term, specialized support to a mediation process. They cannot be deployed for periods exceeding 30 days. The areas of expertise available on the Standby Team include:

- » Process design
- » Power-sharing
- » Wealth-sharing (land, water, oil/gas, mineral, etc.)
- » Constitutional issues
- » Security (DDR, SSR, ceasefires, interim security arrangements)
- » Gender

Using the Mediation Standby Team and other experts — the Doha negotiations on Darfur

A round of negotiations between parties to the Darfur conflict took place in Doha, Qatar, throughout 2010. In support of this process, the Joint Chief Mediator asked for technical assistance from mediation experts to train parties on process and thematic issues as well as to advise the mediation and the parties during the negotiations themselves. In response, DPA deployed a range of experts drawn from the Mediation Standby Team and partner organizations or as individual consultants. The Standby Team expert on power-sharing, for example, was assigned to advise the Chair of the Working Group on Power-sharing and contribute to the drafting of relevant portions of the peace agreement. The Standby Team expert on security issues was assigned to advise one of the negotiating parties on security issues such as DDR and ceasefire management. Other experts were deployed to perform similar functions in areas where the mediation required specialized assistance, such as wealth-sharing/fiscal decentralization, transitional justice and refugee/IDP issues.

The use of the Standby Team provided advantages in terms of deployment speed as well as administrative simplicity since no new funding arrangements were required for their deployment. This allowed DPA to focus its resources on identifying and on-boarding consultants for areas not covered by the Standby Team or where the mediation requested specific advisers.

12.4 Identifying mediation staff: the Mediation Support Roster and Partnerships

A number of resources are available to identify suitable candidates to lead, manage and support a mediation operation. In the initial stages, DPA typically uses existing resources and staff members (e.g., DPA Political Affairs Officers or Mediation Standby Team experts). If a decision is made to establish a mediation team, medium to long-term staffing arrangements should be made.

A key resource to identify specialized staff is the *DPA Mediation Roster*, a database of 200 candidates with various levels of seniority and expertise. The roster includes candidates in the following categories:

- » Senior mediators
- » Operational mediators
- » Thematic mediation experts

Requests for candidates for various posts in a mediation team can be submitted to MSU. On the basis of a request, MSU would provide a shortlist of candidates for review and selection by the requesting entity.

In addition, MSU also maintains an extensive network of specialized mediation partners from which expertise can be mobilized.

Areas of expertise covered by the DPA Mediation Roster, partners and the Mediation Standby Team include:

- » Power-sharing
- » Constitution-making
- » Rule of law
- » Refugees & IDPs
- » Security, ceasefires and transitional measures (DDR, SSR)
- » Wealth-sharing (fiscal, natural resources)
- » Transitional justice
- » Process design and mediation strategy development
- » Drafting
- » National dialogues
- » Gender (sexual and gender-based violence, strategies for women's effective participation, etc.)

12.5. In-briefings

The importance of briefing staff before their deployment to the field cannot be over-emphasized, particularly for senior managers. A UN Mediator's Manual and a Special Envoy Briefing Package, containing a range of mediation guidance products, UN rules and regulations and country-specific information, have been compiled specifically for this purpose (see *contents checklist*). The package, which is constantly being updated, is available at MSU. It does not, however, provide a substitute for face-to-face in-briefings and meetings with senior DPA managers, including the head of the Department, the directors of concerned regional divisions, the Executive Office and the Head of Public Communications. One-on-one coaching, strategy development and training sessions can also be arranged through MSU.

Desk officers are responsible for arranging briefings for incoming staff on certain administrative regulations by the Executive Office.

Coaching and skills development — the Nepal example

Sound mediation and negotiation skills are important for UN staff to fulfil the mandate of a particular UN mission in the field. To this end, the United Nations Mission in Nepal (UNMIN) requested the support of the Mediation Support Unit (MSU) for the organization of a tailored training in early 2009. The training included a one-on-one coaching programme for the Representative of the Secretary-General on negotiation and mediation skills, as well as specific training sessions for Political Affairs Officers and Arms Monitors. Two partner organizations and the Mediation Standby Team expert on security arrangements travelled to Nepal to deliver the training. The training event offered UNMIN staff an opportunity to reflect on the theory and practice of negotiation and mediation processes and to apply it to their specific operating environment.

13. Operational support needs

13.1. Travel

Seldom is a mediation project launched without intensive travel, be it of staff members or consultants. Travel requirements for mediation operations, especially in crisis situations, are distinct in many aspects from normal official travel. Such travel is difficult to plan in advance. Coordination and scheduling often leads to rush travel requirements that are often amended shortly afterwards. These challenges are even more acute when travel occurs in the field or during weekends or holidays. Adding to this stress are complex rules governing entitlements for official travel, such as class of tickets, self-ticketing, ad hoc and special Daily Subsistence Allowance (DSA) rates and miscellaneous expenses, that can be hard to understand and follow by staff unfamiliar with UN rules and regulations. It is important to manage expectations and inform new staff of the rules and implications of UN travel entitlements. More information is available on the [International Civil Service Website](#).

In DPA, all travel authorizations are managed by the Executive Office. Requests for travel should be submitted using existing procedures as explained in the [DPA Travel Guide](#).

Desk officers are, however, responsible for coordinating the travel of UN staff members with field teams and host authorities, including issuance of credentials or letters of introduction.

Other travel requirements include:

- » Issuance of entry visas, if required
- » Security clearance
- » Medical clearance

A “[travel checklist](#)” is available on the DPA Intranet.

13.2. Operational support requirements

Mediation operations have particular support needs which should be budgeted during the planning phase. In some cases, existing UN entities on the ground may be able to provide some support services to DPA staff on the basis of a prior agreement; at other times, mediation teams may need to resort to local vendors directly. Options in this regard should be assessed early in the planning process and factored into the operational budget. For this reason, it is of critical importance that representatives of the DPA Executive Office be involved as early as possible in the planning process as well as in field planning missions.

In addition to staffing, operational support requirements include:

- » Local transport: vehicles, fuel facilities and drivers
- » Facilities: office space, meeting rooms of appropriate sizes for the mediation process as well as conference management services (interpretation, catering, protocol, etc.)
- » Communications and IT: mobile phones, computers, printers, scanners and secure internet connections
- » Hospitality accounts for the hosting of meetings

14. Financial and administrative support structures

One of the most important aspects of starting up a mediation operation is the establishment of a functional and responsive support structure to manage administrative and financial issues as well as to coordinate other support functions, such as transport, logistics, communications and facilities. This aspect has often been overlooked in the past, resulting in considerable staff time being spent on coordinating support issues rather than focusing on the substantive aspects of the mediation process. As an immediate but short-term measure, it is recommended that support staff (such as representatives of the Executive Office) be included in rapidly deployed teams to handle support issues until a permanent support structure can be identified.

Options in terms of support systems include direct support from Headquarters through the Executive Office, support through the Department of Field Support (DFS) and support through a UN country team. A decision on the most appropriate support structure should be made early on in the planning process and should be based on the support requirements of the operation. The Executive Office can advise on the optimal support structure for each type of operation.

14.1. Support through the DPA Executive Office

Relying on the services of the EO is appropriate in the early phases of start-up or, subsequently, for small teams requiring basic personnel and travel support. Since it relies on existing support systems for DPA, this approach has the advantage of not requiring any special arrangements and is therefore the most immediately responsive. It is difficult, however, for the EO to support

administrative needs at the local level such as the recruitment of local staff or the administration of operational expenses like local transport, information technology or meeting facilities.

The deployment of an administrative/finance officer from the DPA Executive Office at the initial phase of the project can be helpful in order to reduce the need for political staff to focus on support aspects.

14.2 Support through the Department of Field Support

DFS can provide support services to DPA-led SPMs and other types of operations in the areas of (1) finance, funding, budgeting and liquidation (2) personnel management including recruiting (3) information technology and (4) logistics, including transport and property management.

More information on the services available from DFS, including the distribution of responsibilities and accountability between DPA and DFS in operations supported by DFS, are provided in the forthcoming service level agreement between the two departments.

14.3. Support through a UN country team

Finally, field support services can also be provided by a UN country team, usually through UNDP. In these cases, the Executive Office issues a financial authorization to the responsible entity — often the local UNDP office — who then manages all support requirements locally, including disbursements and accounting. Financial authorizations are issued on the basis of an operational budget which is approved by DPA at Headquarters level. As a general rule, as many support functions as possible should

be covered by this arrangement, including regional travel. This approach has the advantage of allowing local requirements, such as the recruitment of local staff or the administration of local operational expenses, to be met locally. Its disadvantage is that it requires more planning and is considerably less flexible since any deviation from the budget requires approval from Headquarters.

For larger and long-term projects, a memorandum of understanding between DPA and UNDP may be required. In all cases, early contact with the local UNDP office can considerably facilitate the establishment of responsive support systems.

If a mission is expected to last for a longer period, an administrative officer should be recruited as soon as possible to support the team on the ground. The Executive Office can play an active role in briefing and training national staff in order to improve service standards and ensure compliance with administrative regulations.

15. Safety and security

15.1. Security umbrella for mediation staff

Staff safety and security remain a top priority of the UN at all times and should therefore feature prominently in planning and budgeting for any type of field deployment. The safety and security of a mediation team in a field mission will fall under the umbrella of the local UN security management system headed by the designated official (DO). The DO is a senior UN staff member (usually the SRSG or resident coordinator) residing in-country who has been assigned by the Secretary-General to oversee all staff safety and security issues. He or she is assisted by the security

management team (SMT), comprising the country representatives of the UN agencies present in the country, as well as by at least one security adviser who coordinates the day-to-day aspects of security management, such as the monitoring of incidents and maintenance of security systems and protocols.

Staff members deployed as part of mediation teams are required to comply with all security rules, including attendance at security briefings, respect of restrictions on staff movements and compliance with all established security protocols.

15.2. Meeting the safety and security needs of mediation teams

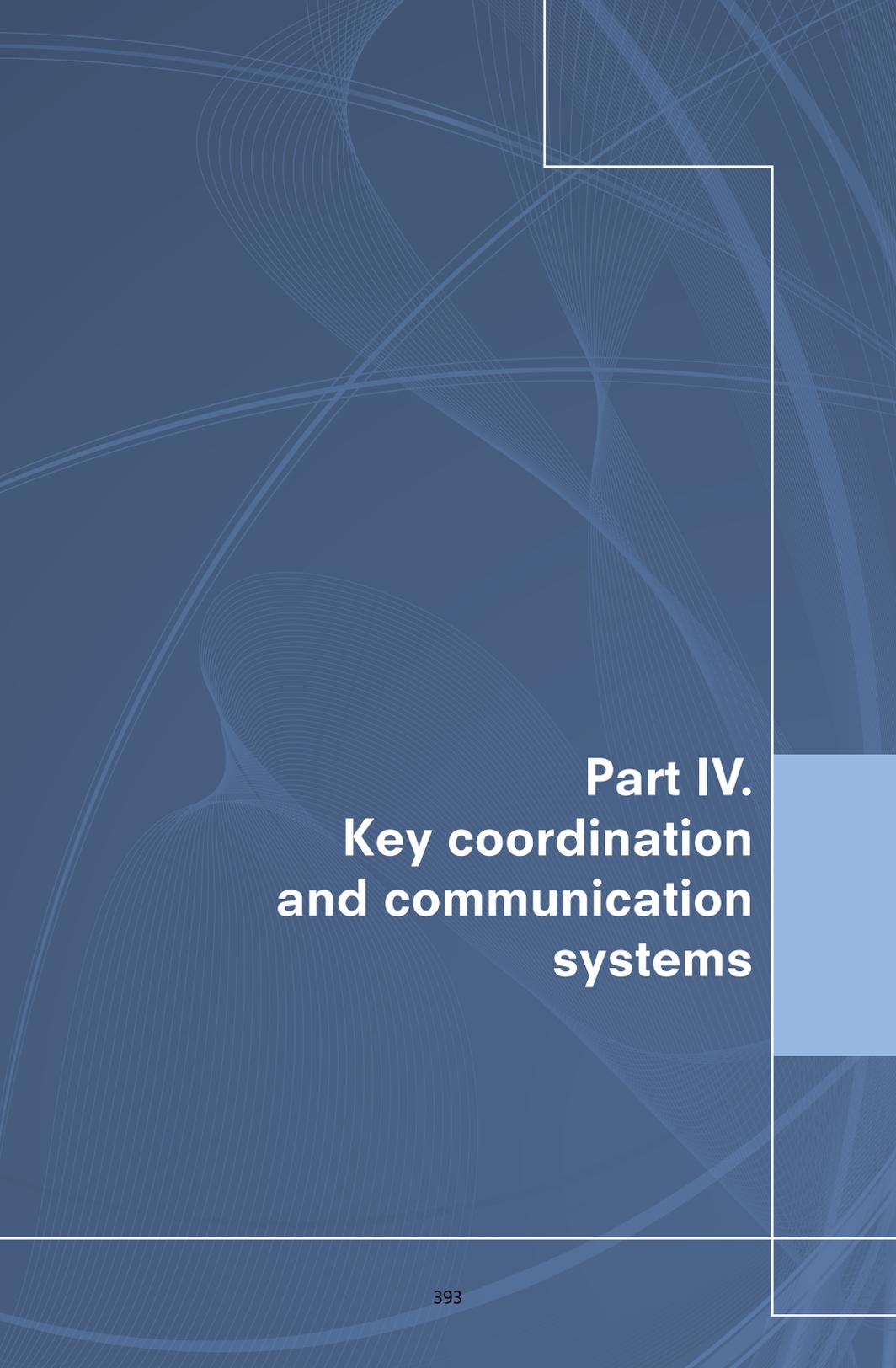
Given the high-profile nature of some mediation initiatives, as well as the stature of some high-level mediators, special security arrangements may be required, such as close protection or installation of particular security systems in facilities and offices. Local security management staff can assist with security risk assessments and make recommendations on how to adapt security systems to the particular operational requirements of mediation teams.

To ensure that adequate security arrangements are in place, the Department of Safety and Security (DSS) should be involved early on in the planning phase, for example, by being included in the Integrated Task Force and, if required, participating in assessment missions. During the implementation phase, mediation teams are expected to liaise closely with DSS staff on the ground.

15.3. Specific security responsibilities of mediation teams

Mediation teams are, by nature, involved in often sensitive and emotionally charged political processes that may, at times,

enflame local sentiments and create additional security risks for UN staff in a country, irrespective of their affiliation to a specific UN agency, fund or programme. This is particularly relevant at key junctures in a peace process. For this reason, it is of critical importance that mediation teams coordinate with those responsible for security management (both the DO locally and the Under-Secretary-General DSS globally) on developments — including the issuance of media statements at country or Headquarters level — that may cause additional security risks for UN staff.



**Part IV.
Key coordination
and communication
systems**

Part IV.

Key coordination and communication systems

A number of supporting systems are common to all mediation processes. The most important of these are for coordination, reporting and communications. These should be established as early as possible in an intervention.

16. Establishing a coordination system

The number of actors involved in mediation endeavours requires the establishment of a sound coordination system. This maximizes unity of effort among all actors (local and international), whose different comparative advantages can be mobilized in support of a process. The UN is often uniquely positioned to manage the coordination system at all levels.

The establishment of coordination systems inevitably raises questions as to which actors should be included and how. While each situation is different, it is advisable to take into account the existing roles and capabilities of different actors to ensure that their networks and influence are adequately leveraged.

Similarly, involving local actors from the start has often proved to be critical to the success of an engagement by ensuring local inputs to strategy development as well as ownership — and therefore support — for the process in the long run.

16.1. Team-level coordination

If several organizations are directly involved in a mediation effort as part of a multi-organization team, a specific coordination forum structured around the lead mediator should be established. This forum is used to exchange information, jointly monitor progress with the mediation strategy and coordinate efforts in support of the lead mediator.

To ensure information-sharing, coordination and cooperation on the ground, a number of additional steps can be taken, such as: co-location of offices in the country in conflict; joint monitoring and analysis of the conflict; joint visits to the country in conflict by the leadership of the organizations; participation by the staff of each mission in the activities of the other mission; public action to demonstrate unity between the organizations, such as joint press conferences; establishment of mechanisms and processes for regular consultation; and joint fundraising for the peace process.

16.2. Country-level coordination

Country-level coordination structures are used to engage local actors other than parties as well as local representatives of international actors such as other Governments or international institutions.

Depending on the design of the mediation process, coordination structures can be established to bring other local stakeholders around a mediation process. If a mediation process includes only political actors, for example, a “consultative forum” of civil society organizations including women’s organizations could be established to keep other local stakeholders informed of the process, seek their inputs and secure their buy-in for an eventual outcome.

For international actors, country-level coordination structures are often organized as local chapters of “contact groups” or “groups of friends”, who also meet at other levels as discussed below. In other cases, resident coordinators, peace and development advisers and specific members of the diplomatic corps (such as the dean) can play a role in coordinating international action locally.

16.3. International-level coordination

The design of an international coordination structure should take into account existing mechanisms (for example, regional contact groups) as well as the risks and opportunities offered by different options.

In recent years, the establishment of contact groups and groups of friends has been a common feature of international crisis management. These structures usually bring together various Governments, regional organizations and, often, international financial institutions interested in a specific country. They are used to share information, keep diplomatic partners abreast of developments, seek international endorsement of strategies and leverage the influence — individually or collectively — of powerful diplomatic allies. One major advantage of contact groups is their ability to mobilize major foreign donors, which can offer a helpful source of leverage or financial support for the implementation of a peace agreement.

The establishment of such groups can also have drawbacks. Divisions among members, for example, can generate contradictory pressures on a peace process. Some members may be overtly or covertly involved in the conflict and seek to use their

participation in international groupings to promote particular interests. For these reasons, relations with members should be managed carefully to avoid accusations of partiality.

“Friends of the mediator can be a useful device, but must be preceded by prior clarification of the cardinal rule, which is a commitment to work only — or at least principally — at the behest of whoever is responsible for the mediating effort.”

— Alvaro De Soto, quoted by
Teresa Whitfield in External actors
in mediation, Centre for
Humanitarian Dialogue,
February 2010

Contact groups and groups of friends can meet at different levels of representation and frequency. It is not uncommon for contact groups to meet weekly in-country at the ambassadorial level, quarterly at the ministerial level and yearly at the Head of State level.

More *information and best practices* on the management of contact groups and groups of friends as well as a *toolkit on working with groups of friends* is available on the Intranet.

In most cases, subregional and regional organizations provide a forum for coordination among neighbouring countries on a specific mediation process. Typically, country cases are discussed as part of regular meetings within these institutions or at summits where Member States may be represented at different levels.

The evolution of dynamics in the international system since the end of the Cold War suggests an ever-growing role for sub-regional and regional organizations in the management and

resolution of conflicts. In Africa, for example, the African Union has taken the lead in setting norms and standards for the international community's response to unconstitutional changes of Government. Subregional organizations, whose Member States are also members of the AU, tend to play a very influential role in determining the positions taken by the continental body.

Given the proximity of regional countries to the conflict area, they tend to be in a position to significantly facilitate or undermine a mediation process. For these reasons, close liaison with regional and subregional coordination structures, and, through these efforts, the alignment of neighbouring States behind a mediation strategy, is one of the most important success factors in a mediation initiative.

Establishing an international contact group — the Guinea example

In December 2008, a military junta led by Captain Moussa Dadis Camara took power in Guinea through a coup d'état. As part of efforts to coordinate international, regional and subregional support towards a return to constitutional order, the African Union (AU) and the Economic Community of West African States (ECOWAS), with the support of the UN, established the International Contact Group (ICG) on Guinea on the margins of the AU summit held in Addis Ababa in January 2009. Chaired jointly by ECOWAS and the AU, the ICG brought together the country's external partners including, the Community of Sahel-Saharan States (CEN-SAD), the European Union, the Mano River Union, the Organization of the Islamic Conference (OIC), the Organisation internationale de la Francophonie (OIF), the UN, the Chair of the AU Peace and Security Council and the Chair of ECOWAS, as well as African and permanent members of the United Nations Security Council. The ICG met regularly in various locations (e.g., Conakry, ECOWAS headquarters in Abuja or United Nations Headquarters in New York) as part of its effort to encourage Guineans to establish transitional institutions, complete the transition through the holding of credible elections and mobilize international resources in support of these efforts.

Throughout the transition, the ICG acted as a forum for the harmonization of international positions and actions on Guinea and the pooling of resources in support of the transition. The Group was particularly successful at channelling international pressure, mobilizing financial and technical resources, facilitating dialogue among parties, encouraging the sharing of best practices and promoting the establishment of a conducive environment for the conduct of a peaceful and democratic transition.

16.4. UN system coordination

Field level

UN system coordination on mediation issues takes place at both field and Headquarters levels. At field level, engaging UN country teams consistently in a mediation process is important to ensure that the actions of all components of the UN are mutually reinforcing and jointly contribute to the achievement of the Organization's strategic objectives in the country. This is also

important in preparing for the role of the UN in the implementation of agreements and longer-term peacebuilding activities. UN country teams meet regularly to discuss common programming challenges and monitor the implementation of integrated UN plans. UN envoys and mediators — even roving envoys without a constant presence in a country — can use these regular meetings to keep UN country teams abreast of developments.

“Having people who had been involved in previous efforts in Cyprus was helpful. They were able to provide institutional knowledge. In addition, it was very helpful to have tapped into UN staff on the ground, as they possessed the required knowledge and expertise. Having people with experience in other Special Political Missions or good offices processes was also useful.”

— Cyprus, After Action Review

Headquarters level

At Headquarters level, UN coordination takes place at the working level through integrated task forces (ITFs), integrated mission task forces (IMTFs) and interagency working groups, which bring together all relevant agencies, funds and programmes in a forum chaired by the lead department. ITFs are created for countries where the UN has an official political, peacekeeping or peacebuilding field presence. Their purpose is to exchange information, coordinate the actions of the various components of the UN and ensure that the different strands of activity are consistent with the political strategy of the UN in a conflict or post-conflict country. The leadership, organization and management of ITFs is the key responsibility of DPA desk officers. In 2009, the Secretary-General’s

Policy Committee approved a new policy whereby an ITF should be created within 48 hours of any unconstitutional change of Government so as to ensure a coordinated UN response. More information on this policy as well as the management of ITFs is available in the *IMPP Guidelines on the Role of Headquarters*.

At the strategic, or principals', level, coordination takes place through the Secretary-General's Policy Committee and bodies such as the Executive Committee on Peace and Security (ECPS).⁵ The Secretary-General's Policy Committee is the highest internal coordination body for the UN. Secretariat departments and agencies, funds and programmes are represented at the leadership level. Issues on the agenda of the Policy Committee are subject to extensive prior consultations, which are articulated in carefully negotiated discussion and decision papers. Policy Committee decisions are particularly helpful for coordinating a systemic response to a situation, for example, the launch of an integrated UN mission or the alignment of the actions of all UN components behind a political strategy. The process leading to a Policy Committee decision can, however, be time consuming.

More guidance on interacting with the Policy Committee, including how to seize it and add items to its agenda, is available in the *SOP on DPA Preparation for PC Meetings*.

The ECPS is an interdepartmental Executive Committee composed of 18 UN departments, offices, programmes and funds. Its mandate was broadly defined as "the highest policy development and management instrument within the United Nations Secretariat on critical, cross-cutting issues of peace and security". The ECPS meets once a month to delineate courses of action in

5 See United Nations coordinating bodies.

situations of immediate security concern as well as in potential conflict situations.

Another resource available for Headquarters-level coordination is the Mediation Focal Points System, which is comprised of all members of the ECPS, including the United Nations Development Fund for Women (UNIFEM). It meets on a monthly basis. This system is the working-level mechanism for developing mediation support policy and guidance materials and sharing best practices across geographic and functional areas.

17. Reporting

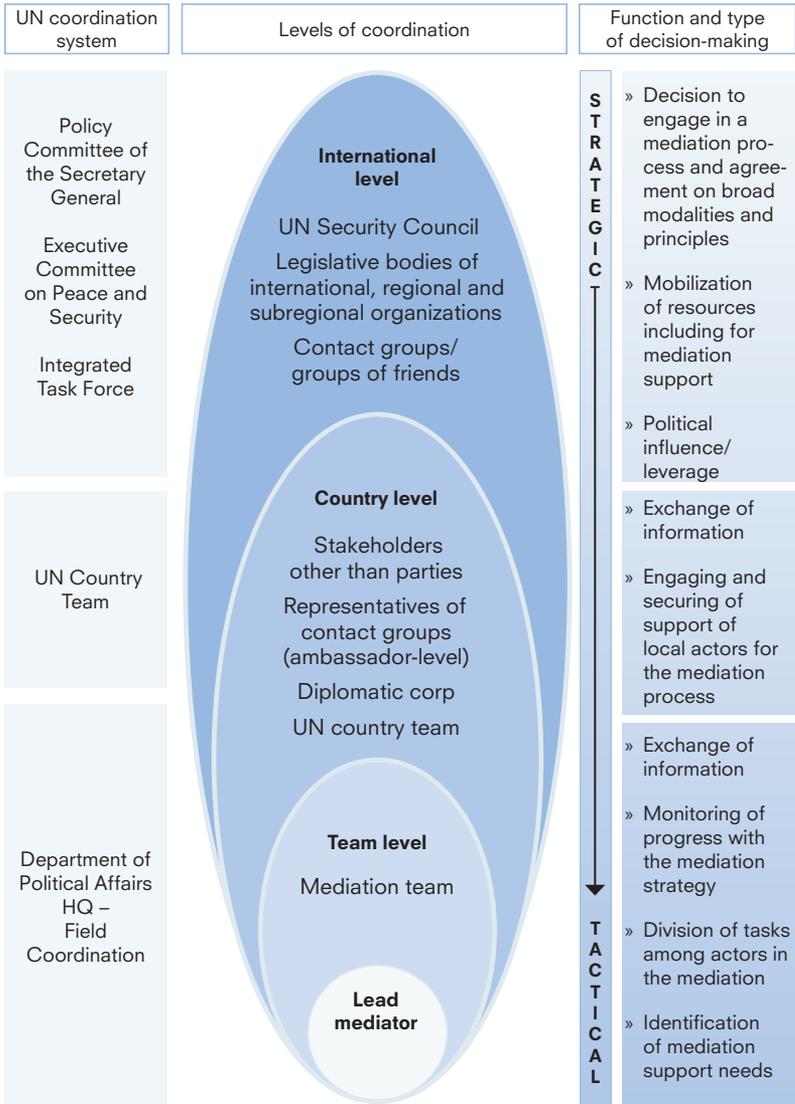
Reporting protocols, including frequency, recipients, format and systems, should be established from the outset of any operation. The purposes of reporting are to allow Headquarters to remain abreast of developments on the ground, to engage in strategic dialogue with the team in the field and to contribute to supporting the team's efforts at other levels.

17.1. Subject of reporting

A key task in the start-up phase is to establish a regular reporting system between the field and Headquarters. The golden rule of reporting is that it should cover *all information that Headquarters needs to be able to support the mission*. Similarly, Headquarters should report to the field on developments at Headquarters level that may affect the conduct of the mission on the ground, such as debates in the Security Council.

Reports should be concise and factual, containing analytical comments, as required, for the reader to appreciate the significance

Figure 4
At a glance: coordination architecture
and levels of decision-making



of developments contained in the reports. They should also contain recommendations for action by Headquarters when appropriate. A *template* for DPA reports is available on the DPA Intranet.

17.2. Recipients of reports

Reporting in mediation engagements is from the head of mission to the Secretary-General *through* the Under-Secretary-General for Political Affairs. Typically, reports are sent to the Under-Secretary-General for Political Affairs with a copy to his advisers on the region concerned, the director of the relevant regional division, desk officers, country focal points in the Mediation Support Unit (MSU) and country focal points in the Electoral Assistance Division, as appropriate. In countries where a peacekeeping operation is deployed, reports may also be sent to the DPKO Situation Centre for dissemination to relevant officers in that Department. When appropriate, reports can also be shared with members of integrated task forces and working groups.

17.3. Management of information security

The distribution list may vary depending on the sensitivity of the information contained in the reports. In pursuance of ST/SGB/2007/6 on information sensitivity, classification and handling, the UN currently uses three levels of information security which affect access to documents:

- » The designation “unclassified” shall apply to information or material whose unauthorized disclosure could reasonably be expected not to cause damage to the work of the UN
- » The designation “confidential” shall apply to information or material whose unauthorized disclosure

could reasonably be expected to cause damage to the work of the UN

- » The designation “strictly confidential” shall apply to information or material whose unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to or impede the conduct of the work of the UN

More details on information security are available in [ST/SGB/2007/6](#).

17.4. Reporting frequency and types of reports

While some operations have fixed reporting cycles, it is generally accepted that reporting should be on an “as needed” basis: several times per day at times of crisis, or every few days in quieter periods. Mediation teams are typically small and reporting requirements should be adapted to the capacity of the team.

Types of reporting may include:

- » Flash reports
- » Daily situation reports
- » Weekly reports
- » Analytical/thematic reports
- » Strategy updates and memos

17.5. Reporting systems and technologies

The UN uses different formats and channels for reporting. In operations where encryption technology is available, the practice has been to use the code cable format to transmit daily reporting as well as for routine exchanges on various matters between Headquarters and the field. In 2010, a new system for integrated

reporting, the operations reports repository (ORR),⁶ was introduced to rationalize reporting and distribution channels. Procedures for access and use of this system are available on the DPA Intranet.

Secure information can be sent from the field to Headquarters using the mobile office (through Citrix) ICT service. This technology allows staff members to connect from their local internet station into the protected Headquarters network, providing access to UN resources and applications. These include ORR, iSeek, the Integrated Management Information System (IMIS) and Lotus Notes. More information on how to request a connection to the mobile office (Citrix) is available in the *UNHQ Mobile Office Standard User's Guide*.

A more informal way of reporting is to hold frequent video or teleconferences between field teams and regional divisions. While at times difficult to plan, this format allows a more personal transmission of information as well as more significant exchanges on strategy.

17.6 Reporting in joint operations

In joint operations, inter-institutional teams may consider issuing common reports to their respective headquarters. While this does not preclude the dispatch of individual reports, it ensures a common monitoring of progress in the implementation of a common strategy.

⁶ ORR is an electronic tool designed by DFS for the collaborative drafting, sharing and electronic storage of DPKO and DPA mission reports.

17.7. Reporting to Member States

A number of channels are available to keep Member States informed of a mediation process. The choice of the most appropriate mechanisms often depends on the intent, which, for example, will affect whether formal or informal channels are used. Informally, reporting can take place routinely through contact group or group of friends meetings, through the establishment of direct lines of communication with particular Governments and the organization of informal briefings for UN legislative bodies. Official briefings for legislative bodies or the Security Council can be arranged for more formal purposes. Other options include the monthly luncheon of the Secretary-General with the Security Council and, for African issues, briefings to the Ad Hoc Working Group on Conflict Prevention and Resolution in Africa.

18. Communications and media management

18.1. Development of a communications strategy

The management of a communications strategy is of critical importance in mediation endeavours. A mediation team's communications strategy should be closely linked to the mediation strategy to ensure that contacts with the public and the media remain focused on advancing the objectives of the mediation. Guidance on the drafting of a communications strategy is available on the DPA Intranet.

In the start-up phase, priorities in the areas of communications are to (1) establish public information management systems (websites, e-mail distribution list for press releases, a contact list

of journalists, linking with United Nations Information Centres (UNICs), etc.) and (2) explain the role of the UN in a country or in a peace process. In many contexts, such an initiative can draw on traditional communicators at the community levels to ensure broad outreach down to that level. The risks associated with the leveraging of local groups should, however, be taken into account and managed.

A Guidance Note on Public Information in Peace Processes and Agreements and a *toolkit on public information management in mediation processes* are available on the DPA Intranet.

18.2. Interactions with the media

Once a UN (or UN-supported) mediation role is publicly acknowledged, interacting with the media will be an unavoidable and indeed critically important part of the senior UN envoy's responsibilities. The UN policy on relations with the media (outlined in the *UN Media Guidelines*) clearly authorizes staff to engage with media on issues for which they are directly responsible, stressing that sensitive issues should be dealt with at the appropriate level of seniority. The challenge is to do so effectively so as to support the objectives of the peace process. In some cases, the mediator will be injecting an impartial UN perspective. In others, he or she may be tasked by common agreement of the parties to speak on behalf of the peace process as a whole.

In joint mediation endeavours with other organizations, it is important to agree on who will address the media to ensure that the team "speaks with one voice".

18.3. Communication tools for mediation teams

At Headquarters level, available communication tools include the publication of statements by the Secretary-General and her/his spokespersons, and direct engagement with the media in the form of press briefings and encounters in New York, which can be facilitated by the DPA Press Officer and the Office of the Spokesperson of the Secretary-General. A briefing by the Head of Public Communications to mediation teams can be very helpful. *The Standard Operating Procedure on Press Statements* provides additional information on these issues.

In the field, communications is conducted using a number of channels, including by:

- » Engaging the local media, including through press encounters following high-level meetings and rounds of negotiation or the use of local press releases
- » Using UN media outlets, including UN radios, UNICs and other means of outreach
- » Engaging civil society groups (women's groups, religious leaders, etc.) and other information transmission channels

Field and Headquarters actors should coordinate closely on all interventions with the media to ensure consistency in messaging across all levels. This is becoming increasingly important as new technologies permit the instant dissemination of information across the world. In particular, statements issued by Headquarters should be closely coordinated with field staff as their content may have implications for the security of staff on the ground.



Part V.
Beyond the
start-up phase

Part V.

Beyond the start-up phase

19. Shift to medium-term planning

The start-up phase comes to a close when a mode of engagement has been selected, a mediation strategy developed, start-up funding has been secured, a mediation team has been staffed and mandate implementation has begun. At this point, the focus should shift to the identification of longer-term options for the sustainment of the mediation processes. As operations often rely on temporary resources in the start-up phase, such as staff deployed from Headquarters or temporary start-up funding, it is important to start considering longer-term options as soon as possible. These options range from making a temporary UN presence more permanent through the identification of longer-term funding and sustainment options to building local capacity for conflict resolution and management.

The shift to longer-term support may also have implications for staffing at Headquarters, an aspect which should be considered as early as possible given the time required to hire new staff.

Plans for the long-term management of operations should also include provisions for the periodic review of mediation strategies, including regular reflections on whether the mediation effort should continue. This should be assessed in relation to the

objectives identified at the launch of the operation as well as the impact of the mediation on the conflict.

20. Options for medium-term funding

A number of generic options are available for medium-term funding depending on the nature of the process, the role played by the UN and the forecast of upcoming requirements. These options include:

- » Establishment of a Special Political Mission (SPM) or revision of an existing SPM mandate, which requires a mandate from the Security Council
- » Creation of a special trust fund to finance the operation in the medium to long term
- » Handover to another UN component such as the Resident Coordinator's office or to another organization

The Policy and Mediation Division of DPA can provide advice on these options.

21. Lessons learning

21.1. Lessons learning as part of the strengthening agenda of DPA

As part of its institutional strengthening agenda, DPA has designed and approved a number of tools to facilitate lessons learning and the identification of best practices for replication from one operation to another other. These learning activities allow teams to improve their operations in real time by reflecting on positive

and negative aspects of their activities, and the Department to improve its effectiveness over time. More information on *knowledge management resources* available to DPA staff is available on the DPA Intranet.

21.2. When and how to conduct lessons-learning exercises

Although lessons learning can take place at any point in an operation, it usually coincides with the closure of a particular project or phase. An After Action Review could, for example, be conducted after the initial planning phase or at mid-point in a mediation process. DPA *lessons learning methodologies and templates* are available on the DPA Intranet.

All senior officials are required to submit *End of Assignment Reports* following the completion of their mandates. The Mediator-in-Residence Programme can also allow senior officials to spend some time at Headquarters reflecting on their assignments and providing recommendations for the future. Other staff and consultants should be debriefed immediately upon return from their assignment. The main objective of debriefing procedures is to build a departmental institutional memory on key challenges and good practices in mediation processes. The capture of such lessons will be used in the continuity of the mission or for future missions.

It is also important that key documents be archived on UN Peacemaker and the DPA Intranet for the reference of future teams.

D. REFERENCES

Related guidance materials:

- » Guidelines for Desk Officers on supporting SPMs
- » Progress Report: transforming DPA's Preventive Diplomacy, Mediation and Peacebuilding efforts
- » Secretary-General's report on enhancing mediation and its support activities
- » DPA Framework for Political Analysis
- » UN Guidelines for Strategic Assessment
- » AU-UN Mediation Partnerships Guidelines
- » Checklist of Key Questions when Designing Mediation Processes
- » Operational Guidance Note: pre-negotiation checklist
- » Joint Planning for Joint Mediations: Strategy Development Workshop
- » Instructions Manual: Policy Committee of the Secretary-General
- » A Manual for UN Mediators: Advice from UN Representatives and Envoys
- » Groups of Friends and their Uses
- » Working with Groups of Friends (USIP)
- » SOP: DPA Preparation for Policy Committee Meetings
- » IMPP Guidelines: Role of Headquarters — Integrated Planning for UN Field Presences
- » Policy Committee of the Secretary-General: Guidance, and Tips for Drafting Effective Recommendations

- » Policy Committee of the Secretary-General: Checklist for Desk Officers
- » Delegated Authority in UN Field Missions led by DPA and supported by DFS
- » Secretary-General's Bulletin on the organization of the Department of Political Affairs
- » Policy Directive: DPA Extrabudgetary Resources Management
- » DPA Resource Mobilization Guideline
- » DPA Trust Fund Management Guideline
- » DPA Project Management Guideline
- » Framework for the Engagement of PDAs in Support of Field-based Conflict Prevention Initiatives
- » Mediation Start-up Budget Template
- » Mediation Start-up Budget Sample
- » Cluster I XB Funding Request Template
- » Checklist of Special Envoy Briefing Package
- » DPA Mediation Roster Fact Sheet
- » General Tips for Hiring External Consultants
- » TOR for Lead Mediator: Sample
- » TOR for Mediation Team Chief of Staff: Sample
- » TOR Chief of Operations for Mediation Support
- » TOR Mediation Support Officer: Sample
- » DPA Official Travel Guide
- » Travel Checklist
- » Secretary-General's Bulletin on information sensitivity, classification and handling

- » User Guide for Operations Reports Repository
- » FAQ Guide for Operations Reports Repository
- » Policy Guidance: Public Information (DPI/DPKO)
- » DPI Media Guidelines
- » Addressing the media in peace processes and agreements
- » Public Information in Peace Processes Agreements
- » Peace Operations Missions Start-up Field Guide
- » After Action Reviews on mediation start-up and management in Cyprus, Kenya and Madagascar
- » Guidance and Templates: End of Assignment Reports
- » Guidance and Templates: Handover Notes
- » Guidance and Templates: Survey of Practice
- » DPA Report Template

E. MONITORING AND COMPLIANCE

The responsibility for compliance with these Guidelines lies with all components of DPA, as appropriate.

Monitoring of compliance is the responsibility of the Mediation Support Unit.

F. CONTACT AND RESOURCES ON START-UP PROCESSES

The contact person for further information on mediation start-up is Sébastien Lapierre (lapierre@un.org or 917-367-5438) in the Mediation Support Unit of the Policy and Mediation Division.

G. HISTORY

These Guidelines were approved on 8 June 2011 by the Under-Secretary-General for Political Affairs, and should be reviewed no later than 30 June 2013.

Annex: Mediation start-up checklist

Key tasks	Specific considerations
I — Strategic planning for mediation engagements	
Assessment and decision-making	
<input type="checkbox"/> Conflict analysis	» The local UN team, civil society representatives and Member States can provide invaluable knowledge and information.
<input type="checkbox"/> Assessment of engagement options	» Is mediation the most suitable form of third-party engagement?
<input type="checkbox"/> Liaison and strategic coordination with other actors (local and international), including agreement on lead mediator	Strategic coordination includes: <ul style="list-style-type: none"> » Development of a joint vision » Agreement on a division of labour » Agreement on key principles and definition of what minimal outcome would be acceptable » Agreement on basic modalities, e.g., leadership of the initiative, time frames
<input type="checkbox"/> Determination of mode of UN engagement	» Direct (lead or co-lead) or indirect (support) engagement?
Developing a mediation strategy	
<input type="checkbox"/> Development of a mediation strategy	» Inclusion of views of local actors, including representatives of women The strategy should include: <ul style="list-style-type: none"> » A broad approach » International/local actors that must be included in the process » Schematic coordination architecture » A process that will be used to reach an agreement » Post-agreement requirements and support structure
<input type="checkbox"/> Endorsement of the strategy at appropriate levels	
II — Operational planning for mediation processes	
<input type="checkbox"/> Development of an operational plan	» To be developed in close collaboration with EO, the operational plan identifies the concrete resources required to implement the strategy.
<input type="checkbox"/> Identification of sources of funding	Consider: <ul style="list-style-type: none"> » Existing resources » Extrabudgetary funds » Funds from the Secretary-General's unforeseen and extraordinary expenses account » Peacebuilding Fund » SPMs provisions in the regular budget
<input type="checkbox"/> Finalization of operational budgets	Consider expenses for: <ul style="list-style-type: none"> » Staffing (international and national) » Travel and DSA » Office facilities » Operational expenses (meeting rooms, etc.) » Communication and IT » Local transport
<input type="checkbox"/> Drafting of TOR for envoys and staff	» ToRs should mention responsibilities and expectations, including reporting protocol between the field and Headquarters
<input type="checkbox"/> Identification of suitable candidates for the mediation team	Consider: <ul style="list-style-type: none"> » Existing staff » Temporary appointments » Consultants or experts » National staff, consultants or individual contractors » Standby team of experts and partners

<input type="checkbox"/> Issuance of contracts	» Political implications of staff titles and administrative status
<input type="checkbox"/> In-briefing of staff	» Personal briefings and meetings with senior DPA managers » Provision of guidance documents from Special Envoy Briefing Package, UN Mediator's Manual, Mediation Start-up Resource Package, etc.
<input type="checkbox"/> Travel arrangements	In addition to air tickets and accommodation arrangements, considerations include: » Issuance of visas » Security clearance » Medical clearance
<input type="checkbox"/> Mobilization of operational resources	Including: » Local transportation » Communications and IT equipment » Office facilities
<input type="checkbox"/> Decision on the financial and administrative support structure	Consider support through: » DPA/Headquarters through the Executive Office (EO) » The Department of Field Support (DFS) » The UN country team
<input type="checkbox"/> Safety and security requirements	» How will the safety and security of the team be managed? » How will the specific security needs of the team be taken into account? » How will the team share information on developments that may affect the security of other UN staff members in the country?

III — Establishment of coordination and communication systems

<input type="checkbox"/> Design and establishment of a coordination architecture	» At the team level » At the country level » At the international level » Within the UN system (Headquarters and field)
<input type="checkbox"/> Establishment of a reporting system	Consider: » Recipients of reports » Reporting frequency and types of reports » Common reporting in joint operations » Systems and technologies
<input type="checkbox"/> Liaison with Member States	» Different formats (formal or informal) for different objectives
<input type="checkbox"/> Communication and media management strategy	» The communications strategy in an extension of the mediation strategy The strategy should include: » Clear articulation of objectives, key messages, media monitoring system and outreach infrastructure » Field/Headquarters coordination of interventions with the media » Linkage with United Nation Information Centres (UNICs)

IV — Beyond the start-up phase

<input type="checkbox"/> Strategic guidance, including revision of mediation strategy	» Is the mediation effort helping to resolve the conflict, or merely “freezing” it?
<input type="checkbox"/> Planning for the medium term and initiating a shift to medium-term funding sources	Including: » Identification of medium-term funding options to sustain the operation
<input type="checkbox"/> Capturing lesson learned and institutional memory	Including: » After Action Reviews at different stages of the mediation process » End of Assignment reports for senior officials » “Mediator-in-residence” debriefing option

www.un.org/depts/dpa

www.un.org/peacemaker



“Because the domestic constituency to raise this issue is often relatively silent or powerless, the international community has a duty to ensure that the concerns and needs of women are addressed at every possible stage of peace making.”

– Ian Martin, Department of Political Affairs, and former SRSG for Nepal.

Joint Strategy on Gender and Mediation UN Entity for Gender Equality and the Empowerment of Women (UN Women) & the UN Department of Political Affairs (DPA)

CONTEXT

Peace processes provide a critical opportunity to reshape the political, security and broader socio-economic landscape of a nation state. However, women have been consistently marginalized in peacemaking efforts. The low number of women at the peace table demonstrates a gap between the aspirations of many global and regional commitments, and the reality women face at the local and national levels. A sample of 24 comprehensive peace processes since 1992, reviewed by UN Women shows that women represent a negligible percentage of all participants to peace negotiations. Consequently ceasefire and peace agreements rarely include women’s specific security and peacebuilding needs. For instance, out of forty-five major conflicts since 1989, sexual violence is only included as a prohibited act in six ceasefire agreements.

Five UN Security Council resolutions (S/RES/1325 (2000), S/RES/1820 (2008), S/RES/1888 (2009), S/RES/1889 (2009), and S/RES/1960 (2010)) and the United Nations Secretary-General’s reports on mediation support (2009) and women’s participation in peace building (2010) have repeatedly called for the inclusion of dedicated gender expertise and greater numbers of women in peace negotiations. Member states have echoed this demand on numerous occasions.

Women’s participation in peacemaking is not only a matter of gender equality, women are crucial partners in shoring up three pillars of lasting peace: economic recovery, social cohesion and political legitimacy. By including women, a mediation process can expand the domestic constituencies engaged in peacemaking, which in turn can build the credibility of the process and broaden national ownership. It can also bring more comprehensive understanding of the causes and alternative solutions to conflict. If women’s participation can result in responses that address broader needs, including their own, this in turn can contribute to long-term sustainability of peace and security,

The lack of participation of women and inclusion of their security and peacebuilding needs in ceasefire and peace agreements can be correlated to the lack of planning for such needs in frameworks for post-conflict recovery.

Subsequently, dedicated resources are not budgeted or allocated, and women’s post-conflict needs go largely unaddressed.

PROGRAMME OVERVIEW

Goal: *To strengthen UN Mediation efforts in addressing women’s security and peacebuilding needs through increased participation of women and gender expertise in mediation and peace processes.*

UN Department of Political Affairs (DPA) and UN Women will collaborate on a three-year Joint Strategy to:

1. Increase the availability and quality of gender expertise in mediation processes; and
2. Support greater and more effective participation by women at all levels of conflict resolution and peacemaking including through the identification and preparation of qualified female mediators.

DPA is the lead UN entity for peacemaking and conflict resolution, providing mediation support to a wide range of stakeholders. DPA is uniquely positioned to strengthen efforts to address gender issues in mediation and peace processes, including through the development of guidance and gender and mediation expertise. UN Women, as the United Nations lead entity mandated to promote women’s empowerment, is positioned to assist women in conflict-affected areas in developing effective strategies to increase their effective participation in peace processes.

Building on each other’s comparative advantage, under the Joint Strategy, the following outputs will be achieved:

DPA will be responsible for:

- ✓ Recruitment and deployment of a senior-level Gender and Mediation Expert as part of the UN Mediation Support Standby Team.
- ✓ Development and roll-out of guidance materials for mediators on addressing gender issues, including conflict-related sexual violence, in peace processes, including in ceasefire and peace agreements.

- ✓ Development and delivery of training on gender and mediation, including a focus on addressing conflict-related sexual violence, for mediation experts, mediation teams and DPA field missions.
- ✓ Building and maintaining, as part of the Mediation Support Unit's roster of specialists, 1) a roster of high-level female mediators to serve in UN-supported mediation processes and 2) a roster of technical experts on mediation, gender issues, including conflict-related sexual violence.
- ✓ Building and maintaining a database of women involved in mediation efforts (Track I, II, observers etc).

UN Women will be responsible for:

- ✓ Providing women's organizations and peacemakers with fellowships, direct support and technical assistance on how to participate effectively in UN-mediated peace processes;
- ✓ Collecting and disseminating relevant information and best practices about how to engage in UN-mediated peace processes;
- ✓ Supporting access opportunities for women in peace negotiations, including through support for observer groups, and more informal engagement between women's peace coalitions, mediators and negotiators;
- ✓ Strengthening the capacities of civil society, in particular women's organizations and peace coalitions, to address gender issues in the main components of peace agreements;
- ✓ Developing a database of women's organizations involved in conflict resolution and peacebuilding;

PARTNERS

- UN DPA-led field missions/regional offices and UN Women regional/country offices; UN Peacekeeping Operations, UN Country Teams as and where relevant.
- The Office of the UN Secretary General.
- Member States, in particular the Group of Friends on Women, Peace and Security (chaired by the Permanent Mission of Canada) and the 'Practically Minded Group' (chaired by the Permanent Mission of the United Kingdom).
- Regional organizations as and where relevant (AU, EU, ECOWAS, etc).
- Mediation expert organizations, such as the Centre for Centre for Humanitarian Dialogue (HD Centre), Swisspeace, Conflict Management Initiatives (CMI),

United States Institute for Peace (USIP), Club of Madrid , etc.

- Women and peace-building expert organizations, such as the Open Society Institute (OSI), and the Institute for Inclusive Security.

EXPECTED RESULTS

- Appointment by the UN Secretary-General of a woman chief mediator to a mediation process.
- Identification and classification of technical experts on mediation, gender and sexual violence, available to Member States, regional and sub-regional organizations, Non-Governmental Organizations and other stakeholders, and ready to be appointed in various capacities to upcoming peace processes.
- UN Mediation efforts increasingly include women as experts and participants and mainstream gender throughout peace talks, as an indicator of progress on UNSCR 1325.
- Increase in attention to women's participation in mediation processes by the UN Security Council, Member States, in UN DPA political analysis and communications, and in the Secretary-General's statements.

Total Project Cost (for 3 years)	\$5,470,897
DPA	\$1,903,927
UN Women	\$3,566,970
<i>* Donor funds will be received separately by each entity. (See Joint Strategy Budget)</i>	

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General Assembly Security Council

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Agenda item 74

Report of the International Criminal Court

Security Council
Sixty-eighth year

Identical letters dated 3 April 2013 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council

I have the honour to transmit herewith the text of guidelines that I have issued on contacts with persons who are the subject of arrest warrants or summonses issued by the International Criminal Court (see annex).

The guidelines set out the policy of the Secretariat on contacts between United Nations officials and persons who are the subject of arrest warrants or summonses issued by the Court. They have recently been redrafted and redistributed to senior officials of all units of the Secretariat, including field presences and operations, and of the offices, programmes and funds.

I should be grateful if you would bring the present letter and its annex to the attention of the members of the General Assembly and the Security Council.

(Signed) **BAN Ki-moon**



Annex

Guidance on contacts with persons who are the subject of arrest warrants or summonses issued by the International Criminal Court

The present guidance applies to all parts of the Secretariat, including Secretariat units and offices, programmes and funds.

Background

International Criminal Court proceedings are initiated by the issuance of either an arrest warrant or a summons to appear. Both documents contain, inter alia, reference to the crimes which the person is alleged to have committed, as well as a short statement of the facts which are alleged to constitute those crimes.

The Pre-Trial Chamber issues an arrest warrant in response to an application made by the Prosecutor when the Chamber feels that there are reasonable grounds to believe that the person has committed a crime under the jurisdiction of the International Criminal Court, and when the Chamber finds it necessary that the person be arrested. States parties to the Rome Statute of the International Criminal Court are under an obligation to enforce an arrest warrant issued by the Court.

A summons to appear is an alternative to an arrest warrant and may be sought by the Prosecutor where there are reasonable grounds to believe the accused person has committed the alleged crimes and when the summons is sufficient to ensure the person will appear before the Court. To date the International Criminal Court has issued nine summonses to appear and each of the accused persons summoned have appeared voluntarily before the Court.

(1) Persons subject to warrants of arrest

- Contacts between United Nations officials and persons who are the subject of warrants of arrest issued by the International Criminal Court should be limited to those which are strictly required for carrying out essential United Nations mandated activities.
- The presence of United Nations officials at any ceremonial or similar occasion that is attended by any such person should be avoided. Standard courtesy calls should not be made.
- When contacts are absolutely necessary, an attempt should be made, where possible, to interact with individuals of the same group or party who are not the subject of an International Criminal Court arrest warrant.

Commentary

1. As a general rule, there should be no meetings between United Nations officials and persons who are the subject of warrants of arrest issued by the International Criminal Court.
2. There should be no ceremonial meetings with such persons and standard courtesy calls should not be paid on them. The same holds true of receptions, photo opportunities, attendance at national day celebrations and so on.

3. If the person holds a position of authority in a State, every effort should be made to meet and liaise with individuals other than the person subject to a warrant of arrest in order to conduct business.
4. This being said, there may still be a need, in exceptional circumstances, to interact directly with a person who is the subject of an International Criminal Court arrest warrant. Where this is an imperative for the performance of essential United Nations mandated activities, direct interaction with such a person may take place to the extent necessary only.
5. The decision as to whether contact is strictly required in order to carry out United Nations mandated activities is an operational one, which is to be made in the light of a careful consideration of all the circumstances.
6. It may be important for the Secretary-General and Deputy Secretary-General, from time to time, to have direct contact with such a person, in order to address fundamental issues affecting the ability of the United Nations and its various offices, programmes and funds to carry out their mandates in the country concerned, including vital matters of security.
7. It can be anticipated that persons who are the subject of arrest warrants issued by the International Criminal Court may deliberately seek to meet with United Nations officials in order to demonstrate their contempt for the Court and try to undermine its authority. While the United Nations and the International Criminal Court are separate organizations, each with its own mandate, the two organizations share the objective of putting an end to impunity for the most serious crimes of international concern. Furthermore, the Relationship Agreement between the United Nations and the International Criminal Court requires the United Nations to refrain from any actions that would frustrate the activities of the Court and its various organs, including the Prosecutor, or undermine the authority of their decisions.

(2) Persons subject to summonses to appear

- United Nations officials may interact without restrictions with persons who are the subject of a summons to appear issued by the International Criminal Court and who are cooperating with the Court.
- In the event that such a person ceases to cooperate with the Court and the Prosecutor seeks the issuance by the Court of a warrant for his/her arrest, the guidance on persons subject to warrants of arrest set out in (1) above should be followed.

Commentary

1. Interactions between United Nations officials and a person who is the subject of a summons to appear and who is complying with that summons and cooperating with the International Criminal Court may carry on without restrictions. Such interactions do not undermine the authority of the Court.
2. This changes if the person concerned ceases to comply with the summons and to cooperate with the Court.

(3) Information

- Information on which individuals are the subject of warrants of arrest and which are the subject of summonses to appear may be obtained from the website of the International Criminal Court (www.icc-cpi.int) or from the focal point for the Court in the Office of Legal Affairs.
-



General Assembly

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Sixty-fifth session
Agenda item 33

Resolution adopted by the General Assembly

[without reference to a Main Committee (A/65/L.79 and Add.1)]

65/283. Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution

The General Assembly,

Guided by the purposes and principles enshrined in the Charter of the United Nations,

Reaffirming its commitment to respect the sovereignty, territorial integrity and political independence of all States,

Recalling Chapter VI, including Article 33, paragraph 1, of the Charter, and other Articles relevant to mediation,

Bearing in mind its responsibilities, functions and powers under the Charter, and thus recalling all its relevant resolutions in matters related to the peaceful settlement of disputes, conflict prevention and resolution, including through mediation,

Reaffirming its commitment to uphold the sovereign equality of all States, respect for their territorial integrity and political independence and the duty of Member States to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes and principles of the United Nations, and to uphold the resolution of disputes by peaceful means and in conformity with the principles of justice and international law, the right to self-determination of peoples which remain under colonial domination or foreign occupation, non-interference in the internal affairs of States, respect for human rights and fundamental freedoms, respect for the equal rights of all without distinction as to race, sex, language or religion, international cooperation in solving international problems of an economic, social, cultural or humanitarian character and the fulfilment in good faith of the obligations assumed in accordance with the Charter,

Bearing in mind that armed and other types of conflicts and terrorism, in all its forms and manifestations, and hostage-taking still persist in many parts of the world,



Recalling its resolution 57/337 of 3 July 2003 on the prevention of armed conflict and the 2005 World Summit Outcome¹ which recognizes the important role of the good offices of the Secretary-General, including in the mediation of disputes, and which supports the efforts of the Secretary-General in strengthening his capacity in this area,

Taking note of the report of the Secretary-General of 8 April 2009 on enhancing mediation and its support activities,²

Reaffirming the respective role and authority of the General Assembly and the Security Council in the maintenance of international peace and security in accordance with the Charter,

Recalling all relevant General Assembly resolutions and Security Council presidential statements related to mediation,

Recognizing the growing interest in and the provision of mediation, and its use as a promising and cost-effective tool in the peaceful settlement of disputes, conflict prevention and resolution, without prejudice to other means mentioned in Chapter VI of the Charter, including the use of arbitration and the roles and functions of the International Court of Justice,

Recognizing also the useful role that mediation can play in preventing disputes from escalating into conflicts and conflicts from escalating further, as well as in advancing the resolution of conflicts and thus preventing and/or reducing human suffering and creating conditions conducive to lasting peace and sustainable development, and in this regard, recognizing that peace and development are mutually reinforcing,

Emphasizing that justice is a fundamental building block of sustainable peace,

Reaffirming its commitment to the purposes and principles of the Charter and international law, which are indispensable foundations of a more peaceful, prosperous and just world, and reiterating its determination to foster strict respect for them and to establish a just and lasting peace all over the world,

Recalling that the peaceful settlement of disputes, conflict prevention and resolution, in accordance with the Charter and international law, including through mediation, remain a primary responsibility of Member States without prejudice to Article 36 of the Charter,

Stressing the importance of mediation activities in peacebuilding and recovery processes, in particular in preventing post-conflict countries from relapsing into conflict, and in this regard recognizing the advisory role of the Peacebuilding Commission in supporting peace efforts in countries on its agenda,

Recalling the good offices of the Secretary-General and his efforts, through the Department of Political Affairs of the Secretariat and its Mediation Support Unit, to develop United Nations mediation capacities in accordance with agreed mandates,

Reaffirming the role of regional and subregional organizations in the maintenance of international peace and security as set out in Chapter VIII of the Charter, and taking note of their important role as mediators, in many regions, acting with the consent of parties to a particular dispute or conflict,

¹ See resolution 60/1.

² S/2009/189.

Recognizing national and civil society actors active in mediation, and encouraging their contributions, when appropriate, in this regard,

Recognizing also the necessity for cooperation and coordination among the actors involved in a specific mediation context, as well as the need to build capacity for mediation activities,

Welcoming different initiatives for mediation, including the mediation for peace initiative, as a step towards strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution,

Recognizing the importance of the full and effective participation of women at all levels, at all stages and in all aspects of the peaceful settlement of disputes, conflict prevention and resolution, as well as the provision of adequate gender expertise for all mediators and their teams, noting that further efforts are necessary to address the lack of women as chief or lead peace mediators, and in this context reaffirming the full and effective implementation of all relevant United Nations resolutions and the Beijing Declaration and Platform for Action,³ and furthermore welcoming the role of the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) in this respect,

1. *Reiterates* that all Member States should strictly adhere to their obligations as laid down in the Charter of the United Nations, including in the peaceful settlement of disputes, conflict prevention and resolution;

2. *Invites* Member States, as appropriate, to optimize the use of mediation and other tools mentioned in Chapter VI of the Charter for the peaceful settlement of disputes, conflict prevention and resolution;

3. *Welcomes* the contributions of Member States to mediation efforts, as appropriate, and encourages them, where appropriate, to develop national mediation capacities, as applicable, in order to ensure coherent mediation and responsiveness;

4. *Encourages* Member States, in this regard, to promote equal, full and effective participation of women in all forums and at all levels of the peaceful settlement of disputes, conflict prevention and resolution, particularly the decision-making level;

5. *Also encourages* Member States, as appropriate, to use the mediation capacities of the United Nations as well as those of regional and subregional organizations, where applicable, and to promote mediation in their bilateral and multilateral relations;

6. *Invites* all Member States to consider providing timely and adequate resources for mediation, in order to assure its success, as well as for mediation capacity-building activities of the United Nations and of regional and subregional organizations, with a view to ensuring the sustainability and predictability of all catalytic resources;

7. *Requests* the Secretary-General to continue to offer good offices, in accordance with the Charter and relevant United Nations resolutions, and to continue to provide mediation support, where appropriate, to special representatives and envoys of the United Nations and to enhance partnerships with regional and subregional organizations, as well as Member States;

³ *Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annexes I and II.

8. *Stresses* the importance of well-trained, impartial, experienced and geographically diverse mediation process and substance experts at all levels to ensure the timely and highest quality support to mediation efforts, supports the efforts of the Secretary-General in maintaining an updated roster of mediators, and encourages the continuing efforts to improve its gender balance and equitable geographical representation;

9. *Encourages* the Secretary-General to appoint women as chief or lead mediators in United Nations-sponsored peace processes, as well as to ensure adequate gender expertise for all United Nations processes;

10. *Recommends* that the Secretary-General, in accordance with mandates agreed upon by Member States, continue to strengthen the mediation capacities of the United Nations system, in particular the Mediation Support Unit of the Department of Political Affairs, and its responsiveness, in accordance with agreed mandates and fully taking into account existing United Nations activities and structures, including in the fields of rule of law and accountability, so as to avoid duplication;

11. *Requests* the Secretary-General, in consultation with Member States and other relevant actors, to develop guidance for more effective mediation, taking into account, inter alia, lessons learned from past and ongoing mediation processes;

12. *Recognizes* that responsible and credible mediation requires, inter alia, the consent of parties to a particular dispute or conflict, the impartiality of the mediators, their compliance with agreed mandates, respect for national sovereignty, compliance with obligations of States and other relevant actors under international law, including applicable treaties, and the operational preparedness, including process and substantive expertise, of the mediators;

13. *Welcomes* the efforts of the Secretary-General to assist Member States and relevant regional and subregional organizations, upon request, in mediation capacity-building for the peaceful settlement of disputes, conflict prevention and resolution, and calls upon the Secretary-General to continue these efforts, in accordance with agreed mandates;

14. *Stresses* the importance of partnerships and cooperation of international, regional and subregional organizations with the United Nations, with each other and with civil society, and of developing mechanisms to improve information-sharing, cooperation and coordination in order to ensure the coherence and complementarity of efforts of actors involved in a specific mediation context;

15. *Invites* relevant international, regional and subregional organizations, as well as civil society, to develop mediation capacities and structures, as appropriate, as well as resource mobilization, and encourages them to follow United Nations guidance for effective mediation;

16. *Welcomes* the efforts of the African Union in developing its mediation capacities and structures, in particular its early warning assessment systems and prevention and response capabilities;

17. *Requests* the Secretary-General to submit a report on the implementation of the present resolution for consideration by Member States at the sixty-sixth session of the General Assembly and to include the views of Member States and other relevant actors, as well as guidance for more effective mediation, as an annex to the report, and requests the Secretary-General to hold regular briefings on this

issue in order to promote closer consultation with Member States and increase transparency;

18. *Decides* to include in the provisional agenda of its sixty-sixth session, under the item entitled “Prevention of armed conflict”, a sub-item entitled “Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution”.

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The Transitional Bridge: A Challenge and Opportunity for Mediators

Nicholas Haysom and Sean Kane

The Arab Spring has reminded us of the importance of properly understanding the tasks, pace and sequencing of political transitions. Following the heady days of Tahrir, Egypt has become a sobering study of an incoherent transition. To varying extents, Tunisia, Libya and Yemen have also faced questions as to the viability of the choices made in their own transitions.

With their attention captured by the imperative of ending armed conflicts and competing visions of the new state, mediators and stakeholders alike often overlook the importance of the transitional period that forms the bridge between the two. Yet transition is a time of institutional vacuum and great uncertainty – perhaps the most challenging period in the building of a new democracy. During transition, systemic challenges on the political, security, and economic fronts are likely to coexist simultaneously. At the same time, popular expectations of a democratic dividend will be soaring. Moreover, many of the key tasks of

the transition – such as elections and constitution-making – are inherently controversial and often divisive.

While much can go wrong in a transition, it is also a time of great opportunity and creativity if approached correctly. From the standpoint of the mediator, the charge is to avoid conflating the tasks of the transition with the final agreement on the construct of the new state.¹ The overriding focus of negotiations on transitional arrangements should be on how they can help secure the conditions of peace and how they provide a *process* to produce a sustainable social compact in a divided society.

The ongoing democratic transitions in the Middle East region illustrate the complex choices which those negotiating a future Syrian transition may be forced to navigate as early as 2013. Given the regional sectarian overlay to its vicious internal conflict, Syria is likely to face the most challenging transition of them all. The wholesale societal

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deconstruction that Syria is undergoing means that it will have little margin for error in any transitional agreement.

The Transition as a Bridge

We refer to the period between the end of the old order and the coming into being of the new enduring social contract as the transition. It follows that a transition is a bridge between the circumstances which prevailed during the conflict or old order, and the constitutional arrangements which will govern the new state. This bridge must be structurally sound because transitions are inevitably high-stake ventures. Their very temporariness is, however, a real advantage to the mediator in search of creative solutions. It allows for compromise and special rules for participation that might not ordinarily be acceptable under electoral democracy. This flexibility can be vital in buttressing the bridge.

Through this lens, the paramount tasks of transitional arrangements are threefold. Firstly, to hold society in place under volatile conditions. Secondly, to guarantee the process of transition and render it irreversible. Finally, to complete the tasks necessary to form the transitional bridge. These usually include elections and constitution-making, which can either contribute to nation-building or may polarize societies. If handled in the wrong way, the political transition in a divided society can become a daily referendum on identity.

Who Supervises the Transition ?

The starting question for any transition is: who should be responsible for managing the process? Given the fluidity of transitions there can be no clear-cut templates, but our experience suggests three broad approaches.

The first approach empowers the existing authorities to implement the transition. This route has the potential benefit of expediting the transitional process by placing responsibility for it with those actors who have the capacity to implement it and who can be held accountable by the international community. But this choice runs the risk of transferring legitimacy to the old order without diminishing its control. Historically successful in South Africa's democratic transition, this approach has largely been rejected by popular movements during the Arab Spring. While not necessarily making a deliberate choice to do so, Egypt came closest to this model.

To maintain credibility, this route normally requires another powerful and credible mechanism to supervise the implementation by the old order. Authorities in Bahrain and Syria have for example cynically and unsuccessfully made cases

for government-run transitions. Even in Morocco, the top-down constitutional reforms granted by King Mohammed VI in June 2011 are increasingly criticized for not touching the paramount powers of the monarchy.

In contrast, the power-sharing approach prefers the immediate participation in government of factions excluded by the previous regime. Under this route, inclusive interim institutions force the parties to take joint responsibility for managing the transfer of power. But this type of transition may stagnate because of the need for consensual decision-making. The clearest example of this approach during the Arab Spring is Yemen, where the interim cabinet is evenly divided between the government and the opposition, and parliamentary decisions are made by consensus. The International Action Group for Syria's Geneva Communiqué also calls for a transition supervised by a neutral transitional authority that "could include" members of the present government, opposition and other groups.²

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The third approach insists on the expulsion of incumbent leaders and on vetting the government bureaucracy for ties to the former regime. It usually follows an unambiguous overthrow of the old order. This approach can provide a 'clean break' with the past, but it can also be polarizing if implemented in a partisan fashion (as with de-Baathification in Iraq). In the Arab Spring, authorities in Libya and Tunisia most closely followed this route of lustration. The picture has proved far more complicated in Egypt, while the "de-Salehification" of the military and civilian structures in Yemen risks degrading the elite power-sharing agreement underpinning its transition.³

In any of these scenarios, transitional arrangements may make a distinction between the transitional government and the authorities supervising it. This can be addressed by an inclusive 'supervisory' committee comprised of a broad range of actors. Such an inclusive supervisory mechanism can allow for necessary amendments to the agreed arrangements – an important consideration. This type of broadly accepted supervisory body was successfully created in Tunisia.⁴ In Egypt, the establishment of an interim presidential council and non-partisan governing authority was mooted early in the transition – possibly a key missed opportunity.

The Pace of Transition

The next critical question is whether the transition should be fast-forwarded to expedite elections even if proper normalization of the security and political environment has not been achieved. The generic dilemma is that early elections are likely to favour both old regime incumbents and the best-organised opposition, while late elections delay the injection of popular legitimacy into the new order and potentially allow the provisional government to entrench itself.⁵

For example, in order to achieve the irreversibility of the transition from military rule in the late 1980s, Chilean democrats accepted an early general election under imperfect conditions. It was this election that cemented the transition by paving the way for the demilitarization of the institutions governing public life. Likewise, in the bottom-up “people power” uprisings of the Arab Spring, there has been a popular push for early elections. The primary intention has been to replace self-appointed interim institutions with elected authorities. But there have also been sharp debates, especially in Egypt and Tunisia, reflecting fears among some stakeholders that their countries were being propelled into early electoral contests, favouring established Islamist opposition parties before new political actors were able to organise.

Contrary to the early elections approach, in the South African transition, the political playing field was leveled through an overhaul of public institutions and laws prior to holding the first democratic national election. But this was only possible because the major players had confidence in the irreversibility of the transition and due to the existence of a credible all-party monitoring and supervisory committee. Similarly, in Tunisia, the formation of the High Commission for the Realization of Revolutionary Objectives was a critical political pre-condition for delaying the first set of parliamentary elections. Confidence in the inevitability of the move towards democracy and the willingness of interim actors to hand over power was not as prevalent in Egypt and Libya, helping to drive their relatively early polls.

Sequence of the Transition

Trust, tradition and context determine whether a transition will allow for a few “wise men” to write a new constitution. This was the method used in Morocco, where King Mohammed VI outlined guidelines for the new constitution and the new charter was quickly written by an appointed commission of experts rather than by an elected assembly.⁶ The international tendency, however, is in the opposite direction – towards respect for a process that provides for

direct participation of the citizenry. This stretches the transition and brings to the fore the question of how to sequence elections and constitution drafting.

The sequencing debate turns on how the legitimacy of the new constitutional order can best be secured. Writing a constitution prior to elections entrusts the drafting process to an unelected transitional authority. But with the political strength of various actors untested by elections, founding fathers and mothers may be more likely to establish meaningful checks and balances on the exercise of power. This type of sequence is suggested in the Action Group for Syria’s communiqué, which proposes a review of Syria’s “constitutional order and legal system” prior to multi-party elections.

“The urge to continue in conflict is difficult to remove until there is an agreed roadmap; otherwise there are simply too many unknowns and everything left to contest.”

In contrast, having constitution-making supervised by an elected body provides a substantial boost of popular legitimacy to constitution making. In Iraq, Grand Ayatollah Ali al-Sistani famously prevailed upon the U.S.-led Coalition Provisional Authority as regards the holding of elections prior to writing a new constitution. More recently, this sequence was followed in Egypt, Libya and Tunisia. Among divided societies, however, there is often the concern that the winner of the first elections may seek to dominate the writing of a new social contract. This route, therefore, assumes a substantial sense of national responsibility on the part of the electoral victor. In the Arab Spring, such a spirit of political generosity has been more visible in Tunisia, for example, than in Egypt.⁷

In the latter case, a coalition of “constitution-firsters” (primarily liberals) argued that the drafting of the constitution could be made more participatory and representative if supervised by an appointed and inclusive interim council. Behind this proposal was a fear of being sidelined in constitution drafting by an elected Parliament that was likely to have an Islamist majority. Islamists meanwhile argued that the constitution would be more legitimate if supervised by an elected body. Egypt’s inability to resolve this tension led to virtually every step in the latter half of its transition being legally and politically contested. As of

writing in early December, its transition was set to culminate with a hostile rather than confirmatory constitutional referendum.

Most transitions are guided by the logic that the new enduring social contract should be popular and legitimate. This usually implies an elected constitutional assembly and a process that is of sufficient duration to enable consultation, deliberation, negotiation and agreement. Concerns about a tyranny of the newly elected majority can be ameliorated by transitional agreements providing guidance on how constitution drafters are selected, setting out decision-making rules that favor consensus, and pre-agreeing broad principles that the future constitution must respect (these points are discussed further below).

Hasty processes involving non-inclusive quick fixes can have long-term disastrous consequences (as seen in post-2003 Iraq). Tunisia and Yemen seem to have internalized this.⁸ In contrast, Libya's original roadmap provided only 60 days for drafting its new constitution.⁹

What should a transition agreement address?

To varying extents, the Arab Spring countries passing through political transitions have suffered from the lack of clear visions on transitional goals, complicating their democratic development.¹⁰ With this in mind, we now attempt to suggest issues, other than those dealt with above, that a model transition agreement might ordinarily address.

A time-bound roadmap

A transition agreement's particular contribution to securing the conditions of peace is to set out a time-bound roadmap for the process. The urge to continue in conflict is difficult to remove until there is an agreed roadmap; otherwise there are simply too many unknowns and everything left to contest. Thus, it is striking how often Arab Spring transitional agreements did not take up this fundamental task. The Yemeni and Libyan agreements did contain specific roadmaps, but formal timelines have generally been absent in constitutional declarations in Egypt and Tunisia.

For the legitimacy of the process, it is also vital that the transition follows the agreed rules and timeframes. A constitution-making process which arbitrarily deviates from its agreed rules may subvert its own standing and, to some extent, this has been the case in two very different recent transitions: Iraq and Egypt.

Decision-making formulae

Negotiators of transitional agreements have at their disposal a wide range of options with respect to decision-

making rules. However, one of the ever-present dangers in the transitional process is that joint decision-making can result in gridlock. Careful consideration should be given to decision-making formulae so that they reflect the need for consensus between major actors without allowing one, perhaps minor, player to hold the process to ransom.¹¹ Frequently, transition agreements also anticipate some form of deadlock-breaking mechanisms in the event of a failure to find agreement during constitutional negotiations.¹²

“Looking forward, Syria appears to embody almost every conceivable challenge that a transition could encounter.”

Pre-agreeing principles

In highly polarized societies, transition agreements may need to guarantee broad but fundamental principles that will govern the transitional process. These statements of principles can serve as a confidence-building device to allow previously conflicting parties and the general public to see that their basic anxieties and aspirations are addressed in advance. For example, in Tunisia, the elected National Constituent Assembly took the step of pre-publishing the Preamble of the new Constitution ten months ahead of the expected completion of the actual text. This was part of an effort by the Islamist-led majority coalition in the National Constituent Assembly to convince various elements of Tunisian society of the non-radical nature of its political programme.

Security and transitional justice

One of the principal functions of a transitional period is to build peace and public order for citizens to exercise their new rights. In an insecure environment, the establishment of basic stability can be *sine qua non* for the transition to succeed.

There are a host of security sector reforms that could require action during the transition, such as integrating government and opposition forces as in Yemen, or building trust between the political leadership and local fighters as was the case in Libya, and which will likely be a challenge in Syria, too. The political priority meanwhile is likely to focus on securing a civilian rather than military-run transition. The initial year of Egypt's transition provides a cautionary tale on the latter path.

Transition documents may also be required to address transitional justice issues, including the past behavior of security forces and insurgents, if only to guarantee their

proper treatment once permanent democratic institutions are in place. The failure to do so can lead to popular revenge-taking, as witnessed in Iraq and Libya, and which is anticipated in Syria.

There can be no quick fixes to these complex security and transitional justice matters. The issue for the transition may, therefore, be conceived as how to send the right signals at the early stages, while recognising the longer-term tasks.¹³

Minimum governance

In addition to a possible long list of tasks typically relating to transition and not detailed here, there is a general need to provide for minimum governance during the transition. This cannot simply be held in abeyance until the transition is completed. The high hurdle that must be cleared is not to allow the likely need for increased inclusivity in government to result in an ensemble of ineffective governance structures that magnify the challenge of meeting basic needs of the population.¹⁴

Permanence of the temporary

In encouraging negotiators and stakeholders to make use of a wider array of governance and decision-making options in developing transition agreements, we are aware of the dangers of establishing compromised institutions and rules. These relate primarily to the tendency of temporary institutions to become permanent – to insist on their own survival.

Looking forward, Syria appears to embody almost every conceivable challenge that a transition could encounter. The issues addressed in transition agreements may often sound technical. However, holding elections, constitution-making, broaching transitional justice and initiating security sector reform are all profoundly political tasks that alter the balance of power in a country. The question is whether an agreed set of rules can be developed to politically inter-mediate this contest. Such an agreement is not a sufficient condition for the success of a transition in Syria, but it is probably a necessary one.

- 1 The clearest example of this conflation in the Arab Spring is in Egypt. Following President Mubarak's resignation, the Supreme Council of the Armed Forces (SCAF) initially tasked a small expert committee to propose a set of amendments to Egypt's 1971 constitution. While some of these amendments focused on election modalities and a possible process for a new constitution, at the outset it was not clear if the exercise was principally aimed at "fixing" the 1971 constitution or, as revolutionaries and reformers demanded, requiring a new constitution and political regime.
- 2 See Action Group for Syria, "Final Communiqué," June 30, 2012. The Action Group includes the UN, League of Arab States, European Union and Permanent Five members of the UN Security Council.
- 3 See April Longley Alley, "Triage for a Fracturing Yemen," Foreign Policy Online, October 31, 2012.
- 4 Through the formation of a "High Commission for the Realization of Revolutionary Objectives, Political Reforms and Democratic Transition" that included all major political parties, civil society representatives, participants in the revolution and non-voting expert technical advisors.
- 5 See Brendan O'Leary, "Elections and the Management of Conflict" in Gareth Stansfield (ed.) *After the Arab Spring: Reconstruction and State-Building* (Witan Press, United Nations Association of the UK, Nov 2012). Tunisia and Libya sought to address concerns over transitional authorities entrenching themselves by requiring interim leaders to pledge not to run in the first set of new elections.
- 6 The Moroccan process from start to finish was wrapped up in a tidy three-month period. The drafting was followed by one day of public consultations held immediately prior to a popular referendum on the new charter (which returned a 98% approval vote). This was followed shortly thereafter by Parliamentary elections held under the new Constitution.
- 7 For more on the sequencing of constitutions and elections see Gluck, Jason, "Constitutional Reform in Transitional States: Challenges and Opportunities Facing Egypt and Tunisia," United States Institute of Peace, *Peacebrief* No. 92, April 29, 2011.
- 8 With Tunisia's constituent assembly likely to take eighteen months to produce a constitution and Yemen preceding its three-month constitutional drafting period with a planned six-month National Dialogue on key national issues.
- 9 This was subsequently expanded to 120 days – still a very tight timeline for allowing meaningful public consultation.
- 10 In Egypt, for example, the committee charged with proposing amendments to the 1971 constitution claim to have received no instruction or guidance from the Supreme Council of the Armed Forces (SCAF) on what to address in their work. The, not surprising, result was a quite narrow focus to the amendments, with extensive gaps and ambiguities in the resulting transitional roadmap (which the SCAF appeared to belatedly realise and sought to resolve with its first Constitutional Declaration). See Nathan Brown, "Egypt's Transition Imbroglio," *Foreign Policy*, April 16, 2012.
- 11 A formula known as 'sufficient consensus' is one approach that has been utilized in Northern Ireland and South Africa.
- 12 These could include procedures for amending the transition plan as well as agreeing to third party mediation or arbitration.
- 13 Authors' communication with Ian Martin, former Secretary-General of Amnesty International and Special Representative of the UN Secretary-General to Libya from 2011 to 2012.
- 14 To varying extents, Egypt, Tunisia, Morocco and Yemen all face situations of economic stagnation that color their transitional politics. In Tunisia it was riots over economic frustration and unemployment that launched the Arab Spring in January 2011. Almost two years into its transition, economic problems such as unemployment, poor service delivery and under investment remain the biggest potential catalyst for unrest in the country.

Engaging non-state armed groups in disarmament

Julian Thomas HOTTINGER

The connection between disarmament and peace negotiations is dynamic, complex and constantly shaping and reshaping the course of both peace and war. No peace agreement is complete, viable or "applicable" without dealing with disarmament. But how? When? And where do you deal with disarmament? How should it be introduced, addressed, and ultimately achieved?

Unfortunately, our understanding of the peace negotiation–disarmament relationship is fragmentary, chiefly because three different schools of thought—military specialists, disarmament, demobilization and reintegration (DDR) specialists and conflict resolution specialists—offer three different and sometimes antagonistic perspectives on the relationship. Military experts tend to focus on the technical aspects of peace negotiations, while mediators will look mainly at political aspects. Some DDR experts may believe that mediators' focus on achieving peace can pose an obstacle to disarmament. Mediators in turn may criticize military approaches as short-sighted, and defend their approach as more pragmatic—mediators look to the person behind the gun, and ensure that the reason for taking up arms is addressed. But the different perspectives do not have to be contradictory; with improved communication, specialists in each field should be able to allow each other the space to enable everyone to fulfil their tasks, and ultimately create a more stable peace.

The aim of this paper is not to downplay the importance of the *content* of a total ceasefire or DDR programme; it is rather to explain how disarmament is dealt with in the different phases of negotiation with non-state armed groups (NSAGs). Why NSAGs? Because today they are the main feature of violent conflicts, both within states and at a regional level. Their prominence in violent conflict has introduced a whole new universe to conflict resolution—a universe demanding an in-depth knowledge of mediation skills.

Often, it is hard to find a sponsor (either a state or an organization) to back a mediation initiative. Sometimes the diaspora, through lobbying and activity within a host country, can create the interest required for a state to want to help address the issue. It is critical to establish contact, build confidence and discuss issues with NSAGs before beginning even to discuss negotiations. Contact is crucial because if NSAGs become isolated they become more difficult to deal with. This is, without exception, the one common denominator shared by all NSAGs, be they in Africa, America, Asia or Europe.

The mediator's main objective is to try and ameliorate the situation on the ground, even if the fighting cannot be stopped. This is a slow and time-consuming process. Conventional mediation techniques do not always help at this early stage of trying to start a process or trying to convince

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adversary parties to negotiate. The need to establish contact, exchange thoughts, explain positions, and try to close gaps that may exist between a NSAG and the outside world is more a task of pre-mediation, or preparatory work for future negotiations, and it requires much patience, understanding and a will to listen—which may not be reciprocated. A mediator cannot force events, but he or she must be able to understand the group's cause and measure changes in the content of discussions, or in guerilla tactics, as they come about.

Conventional mediation will come later. The world of mediation has become so complex and specialized that mediators are now called in to fulfil certain tasks, sometimes just one precise mission within one phase of negotiation. Then they must drop out. Those that began the process, establishing contact and working with the NSAG for years, must step out once the pre-negotiations terminate, as they will not be seen as neutral by the adversary.

What do mediators have to be careful about when negotiating with NSAGs? Which can be delicate issues? And how can the parties be made to respect their engagements? With reflections based on personal experience, this paper also tries very briefly to explain why it is so difficult to deal with disarmament within the preparatory stage of peace negotiations with NSAGs.

Acknowledging the difficulties of dealing with disarmament in no way means that disarmament is a secondary topic. It is of very first importance. But its very importance makes it all the more crucial to get the approach right, to introduce disarmament in a way that will do more good than harm, and especially in a way that makes sure it can be implemented.

The universe of non-state armed groups

NSAGs have existed for a long time, but today most conflicts deal with NSAGs. More and more groups are tending to take up arms and fight the state if they cannot otherwise obtain change. States retaliate by first attempting to delegitimize the NSAG—and today this will most likely involve trying to get the group onto a terrorist list. Once on a list, the state's fight is legitimated and all means can be used to destroy the group; the group also becomes the object of the international community's hostility and in some cases can feel condemned without having been heard. This can entrench the group and make it more violent. It also makes the mediator's job much harder.

Over time, different organizations have developed different strategies to engage armed groups on questions related to disarmament. Major debates have been taking place on how to engage with NSAGs, what to expect from them and how to go about negotiating with them. How can facilitators and mediators, at a multi-track level,¹ best address these groups and help neutralize their negative effects (such as the murder of civilians, rape, torture, plunder)? Much research has been carried out, mainly by non-governmental organizations, on the way NSAGs are to be dealt with and how particular issues should be addressed *before* NSAGs decide to come to the negotiating table, while conflict is still ongoing.² However, very little research has been done on how to convince NSAGs to come to the negotiating table or how to begin negotiating to ascertain peace.

What is clear is that NSAGs are a specific type of actor, and this has implications for those confronted with them in attempting negotiation. Many NSAGs involved in conflict have spent years in the bush. They have become accustomed to a military life and in some cases do not realize the range of issues—normal to civilian life—that they will have to address in negotiations. Life in the bush has not allowed group members to develop the skills required to negotiate, either. Perhaps most significantly, NSAGs live in the short term. It is very difficult for them to accept a middle-term or long-term perspective, which is crucial for peace negotiations—no group will be able to gain everything immediately.

Of course, just as damaging as not fully recognizing that NSAGs represent a distinct type of actor has been the discussion on making a distinction between NSAGs and terrorist groups. Not to mention the new school of thought among some mediators, who believe that you do not negotiate with or for the "bad, bad boys" (they just don't deserve it). The refusal to address certain groups or deal with them once they have been labelled as terrorist is not helpful. Negotiations are not a premium; they are a means to achieve an end to a conflict so that people can get on with their lives, and so that those who have committed major crimes will have to answer for their acts.³

Negotiations are not a premium; they are a means to achieve an end to a conflict so that people can get on with their lives.

THE EVOLUTION OF NON-STATE ARMED GROUPS

NSAGs have changed significantly since research on them first began. Within the last 40 years, they have doubled their life expectancy. In the 1960s and 1970s, an average rebel force in Africa could either obtain its objectives or decide to negotiate within a life span of roughly six years. Today, most NSAGs on the African continent have either existed or fought for 12–16 years.⁴

The fact that the struggle lasts longer means that known commanders or leaders are more likely to get killed either in combat or because of internal struggles. Relations and trust that mediators may have spent years building can be destroyed, meaning the work must begin again, even as far as renegotiating principles that had already been agreed.

These longer-lived armed groups have also spread geographically, and their combatants have become more diverse. Groups have more interests, which can extend beyond a state's borders, therefore involving numerous governments and regional actors. This diversity also means that the group can end up simply fighting for survival; in many cases, combat becomes a way of life and there is little for fighters to go home to.

What does disarmament mean when dealing with NSAGs?

Disarmament means reducing or depriving combatants of weaponry. When negotiating, disarmament refers to a systematic schedule and plan for reducing weapon systems and preparations for war. It can be contrasted with arms control, which essentially refers to the act of controlling rather than eliminating or reducing arms.

Disarmament and arms control negotiations pursue a common objective and usually share a common aim within any negotiation process: to define how arms can be neutralized through negotiation, with the hope of bringing about some form of peace. But it is primordial, though not easy, to try and sequence disarmament and arms control. In some cases arms control negotiations can precede disarmament while in other cases it is the other way around. The idea is for arms control negotiations to be held in good faith on effective measures relating to the cessation of an arms escalation, so that a general and complete disarmament under strict and effective (possibility international) control can then be agreed. At first, certain types of arms (heavy weaponry) can be withdrawn from certain areas, while light weaponry stays in the possession of adversaries. The prevention of escalation measures are being combined with partial disarmament to show goodwill.

To say that disarmament is very distinct from arms control would therefore be untrue. Especially in a setting where the title or the global aspect of a topic is rarely referred to, but where it is instead more common to address the key issues without naming them. Indeed, disarmament is rarely, if ever, negotiated specifically, or as a distinct topic.

This is in part because disarmament is a particularly sensitive topic for NSAGs, as giving up their arms amounts to giving up everything. These groups need their arms to subsist, and they are often unsure that promises made in return for disarmament will be fulfilled. So disarmament is approached with great care. It is often addressed through other topics, and in parts, to avoid drawing attention to the fact that disarmament is under discussion. This approach can also be partly explained because of the overwhelming urgencies of a conflict. Those that can be tackled immediately are taken up first, with the hope of obtaining a drop in violence, while the more thorny, core issues are left until later. When engaging with NSAGs, disarmament does not mean immediate and complete destruction of all weapons. It comes in stages, and the degree and speed at which it comes may vary.

Ensuring disarmament is negotiated

Initially at least, disarmament can appear to cover a vast area and it can mean either just about everything, or very little. Some people will go into long details about what a disarmament process should look like: what the disarmament agreement should contain, what it cannot and how it should be implemented. In my experience, there is no "one size fits all" solution to negotiating disarmament. Nonetheless, there are three factors that must be dealt with for a disarmament process to be viable.

The most important factor is to draw up a process that covers all the issues involved. A mediator must understand the conflict—the cause the NSAGs are fighting for, the logic of the struggle. A mediator is not supposed to get caught in the debate on whether a conflict is religious, ethnic or political, but the way a conflict is described is already a form of engagement. Conflicts often have more causes than the fighting parties admit: including not just religious, ethnic or political issues, but also linguistic, regional, colonial or economic elements. So mediators must consider what the parties are insisting are the key issues, as well as what they are less vocal about (either because they cannot or do not want these issues resolved). It may even be that once the issues are fully understood, the process will call for different forms of attempt to solve the conflict or stop the violence, such as bringing other actors on board, who are not directly involved in the conflict.

Conflicting parties want a "total vision" of their future before they are willing to drop their arms.

Second, disarmament negotiations call for a range of other questions to be dealt with. About fifteen years ago, a mediator could be called upon to negotiate a ceasefire and there was hope that, if the violence could be stopped, a disarmament process could then be put in place and society could be brought out of its conflict. Today, such a strategy is simply a no go. Conflicting parties want a "total vision" of their future before they are willing to drop their arms. Not only will the fighting forces be looking for a military agreement, with some DDR for ex-combatants, they will also want to see power-sharing mechanisms and economic redistribution spelled out. One could say that the parties need an idea of what their future together—with each side's survival guaranteed—will look like.

A third aspect is less well understood. Peace agreements represent the areas of agreement among the parties that negotiated them. In effect, a peace agreement is an initial understanding between conflicting parties on how and what has to be done to be able to *start* living together. They are therefore rarely perfect documents. They will contain some elements on disarmament, probably some basic rights and obligations, and some basic principles on security. But in no case is a peace agreement complete, detailed on every aspect, and always to the point.

Lack of trust, and the fact that parties are testing how far they can trust each other, means that primordial elements can either be deferred to later in the peace process, or not referred to as an outsider would expect them to be. Disarmament will often fall into this category, perhaps because it is such a sensitive topic, and can cause divisions between the commanders of a movement and the rank

and file. The latter can feel sold out as they watch their commanders buying into the deal and gaining something, while they themselves do not see a gain, rather they begin to fear for their future. It is the mediator's task to prevent such important issues from being neglected in negotiation; to ensure that all actors are reassured, but that disarmament is nonetheless addressed.

Phases of a peace agreement negotiation

To understand how to deal with disarmament within peace agreements, it is necessary to grasp, at least schematically, how the peace process works. It is not enough simply to ask people to come to the venue, sit down and talk. There is a series of phases to follow. The conventional three-phase approach consists of the pre-negotiations (talks about the talks), followed by the substantive negotiations or framework, and finally the implementation phase. (Although, in reality, these phases are less distinct and might overlap.) However, when dealing with NSAGs, a supplementary phase, which quite often precedes the pre-negotiations, is particularly apparent. We can call this the "pre-pre-negotiations".

DISARMAMENT IN THE PRE-PRE-NEGOTIATION PHASE

No group will negotiate properly until the time is right, when adversaries conclude that the cost of conflict is unbearable and a solution has to be found. But when this moment does occur, parties must be able to reach out and knock on the right door, so that the negotiations can start as early as possible.

This is particularly important to NSAGs as, living and fighting in the bush, they have little contact with the outside world. Groups tend to imagine that the society they left behind is unchanging, and interpret events according to the hostile environment in which they find themselves. They then feed on their own logic; NSAGs do not allow for much debate or discussion, and they rarely encounter contradictory interpretations, so their positions are hardened.

When it comes to negotiating, then, NSAGs are particularly distrustful of others. They feel at a disadvantage, fearing that they do not have the political skills necessary for negotiations, and suspicious of other parties (even neutral or perhaps sympathetic parties) because they live in such a different world. By establishing contact with a group at a very early stage, long before it is even ready to consider negotiation, the mediator can present the members of the group with a more objective viewpoint. The mediator can also begin to understand the group and in turn explain what could be expected from it if it decides to negotiate, so that it begins to understand the process and feels more confident when the time for negotiation arrives.

The mediator first makes contact with various circles that gravitate around the armed group, be they members of the diaspora, intellectuals known to be close to the group, or family members. The aim is to gradually gain confidence and be introduced into the combatant circles. This can take years and is not always successful.

On the other hand, a peace process can begin. Or if not a peace process, gaining the confidence of the NSAG can allow mediators to bring up the topic of disarmament and perhaps obtain some input on a disarmament plan. A NSAG may agree to apply some initial disarmament or humanitarian principles.

The aim is to try and convince NSAGs to use restrained force and to respect the civilian population. By beginning to deal with disarmament early on, while the conflict is still ongoing, violence can be reduced more rapidly, improving the situation on the ground. Dealing with disarmament during the conflict also encourages NSAGs to begin to think differently. Instead of a confrontational logic, they

move toward an argumentative logic, and this is vital for negotiations. Discussing issues with mediators at this early stage helps NSAGs to feel more at ease with debate and exchange. Disarmament can be the perfect topic for initial discussions because it affects them directly, it deals with their daily life, and it has a concrete impact on the ground. One issue that can often be addressed at this stage is the use of landmines. Humanitarian questions are another "entry point" for discussions, such as respect of civilians, humanitarian corridors, respect of prisoners, no summary executions and a total refusal of torture and rape.

Equally, it is within this pre-pre-negotiation phase that a general debate about disarmament is important. At this stage, mediators are looking for the right moment and the best persons to talk to about disarmament; they must try to introduce discussion of what disarmament means and attempt to ensure that some form of thought is put into implementation, even at this early stage. How the topic is raised is as important as how the concepts are dealt with. These concepts can then be taken out of a global framework and discussed according to the specificities of the conflict and the kinds of violations perpetrated.

These initial principles take a long time to discuss and are rarely accepted by all. There is a range of excuses: the adversary does not behave much better, or the change in attitude will be seen as a weakness and the combatants will no longer be feared. There are also those who argue that such principles are not universal, that they come from a Western world and should not (or cannot) be imposed on others. Discussions will be strongly influenced by the confidence the mediator has acquired with the NSAG and by the group's belief that there is something to gain by starting to think about giving up its weapons.

One is never sure of what to expect when it comes to discussing disarmament in the midst of a conflict with desperate combatants. In some cases NSAGs might desperately need a way out of the conflict, but they are not sure that they can go back to normal life. They do not know if they will be accepted, or if they will be held accountable for past crimes. A NSAG may decide to "behave" and at the same time to start to think about looking for a solution to the conflict, but it may also be looking for retribution. Or a group may agree upon some initial principles, but may then violate them. They are then likely to try to hide the violation for fear of sanctions. If ever there is a possibility of wanting to negotiate the end to a conflict, parties will be haunted by the idea that they could be indicted for violations. So a mediator must tread very carefully, working slowly and gradually.

Introducing the subject of the international community, and of the NSAG's need to gain its respect and understanding, can be useful at this stage. It can encourage the NSAG to apply some humanitarian or disarmament principles. Again, it is a very sensitive topic. NSAGs are often very distrustful of the international community, as it is a world of which they are usually ignorant, and groups often assume that it will act on the behalf of those of its member states that are the NSAG's enemies. Mediators must build confidence to avoid misunderstandings. They need to explain the ways of the international community to NSAGs and encourage the NSAGs to explain their case and their viewpoint. Ultimately, NSAGs need to accept that monitoring of any peace agreement may involve the international community, and perhaps not themselves.

DISARMAMENT WITHIN THE PRE-NEGOTIATION PHASE

In the pre-negotiation phase the mediator or facilitator is getting to know the NSAGs under a new aspect: that of a negotiating partner. Schematically, the facilitator or mediator tries to limit discussions to very practical aspects. Where to meet? What to discuss? How to discuss the content? What is the intent of the negotiations? And who will sit at the negotiating table? The idea is to try to create an inclusive process. Inclusive not referring just to participation (by all parties), but also to content.

The parties will always have prerequisites. These are specific demands that parties put forward, which condition the possibility of whether they will or will not accept to negotiate. There are always human rights and disarmament elements among the prerequisites. In some cases, a party will want guarantees that it will obtain a blanket amnesty for coming to the table. Another party will want guarantees of better conditions for, or the liberation of, some of its imprisoned colleagues. A third group will probably want to make sure that the past is not addressed. While yet another party might try to limit the role of non-governmental organizations or civil society—parties with an interest in defending disarmament—in the process. Sometimes, one party will demand that the other parties' disarmament starts before its own. Their aim is to obtain a form of victory that will justify their coming to the table. There is also hope that this will strengthen their bargaining position.

Parties are likely to try to bargain throughout the process, around any form of disarmament: "we are willing to help implement some form of disarmament under the condition that you get this or that for us". And this is more likely if parties perceive that the mediator is desperate for some sort of success in arms control. Getting caught in such a dynamic, where every issue must be bargained over, creates a negative process that leads to more harm than good. Why does this happen? Because negotiation is not the only reason for coming to the table. The primary aim can be "to test the water", to see what the universe of negotiations is made of. Parties also hope to test their enemies: can they be trusted? Are they willing to make concessions? In some cases, parties wish to be seen to be engaging, or want to use the recess in combat to build up their forces or prepare for the next stage of fighting. It is up to the facilitation or mediation team to try to keep the parties talking.

Among mediators, prerequisites are an eternal topic of debate. Some refuse to discuss them, calling them preconditions. Others will discuss prerequisites, but not in this initial phase. Mediators may be tempted to use creative ambiguity to get over these hurdles, but they must be careful not to jeopardize the whole process just for an initial victory, which could tie their hands and handicap them in the substantive phase. If the prerequisites seem to have been accepted but are then left unfulfilled, trust will be broken. Parties will have an excuse neither to engage nor to leave the table.

To avoid discussing such prerequisites within the pre-negotiations, the parties must be convinced to place them on the future agenda of the talks. It is necessary to insist that only the party itself can convince an adversary of the need of making concessions, so it is best to discuss these issues when the parties are at the table together. For example, the liberation of prisoners is a standard prerequisite. However, this issue often proves far more complex than the parties think—fighters missing in action may in fact have been executed—and can only be dealt with directly, at the actual negotiations.

So should disarmament be discussed at this stage? I would probably say "no"; disarmament can prove an obstacle to the peace process here. During my training to become a mediator about fifteen years ago, the students were told to be very careful regarding the way in which any debate on disarmament was initiated. We were told that by discussing disarmament too soon, or at the wrong moment, when parties have no confidence in each other, and perhaps even less in the mediators, the topic could become a deal breaker. I have certainly participated in one or two negotiations where trying to tackle disarmament at the wrong moment prompted some parties to walk out.

By discussing disarmament too soon, or at the wrong moment, when parties have no confidence in each other, and perhaps even less in the mediators, the topic could become a deal breaker.

It is nonetheless important to recognize that at every initial stage of disarmament agreements will be violated. The parties, nervous of the peace process and seeking an excuse to leave the table, use the violations as just such an excuse. This stage could be called "appeals for ditching disarmament". While the violations cannot be ignored, the mediator's primary objective is to set the process in motion. Therefore, the mediator must strive to keep the parties at the table, while ensuring that

violations will be taken into account later. Disarmament should not be swept under the carpet, but, like all other areas that must be negotiated within a process, it does have to be introduced gradually and at the right time. Some mediators would say that the right time is when the negotiations have reached a point of no return, when the parties have invested enough in the process that they will think twice before walking away.

DISARMAMENT WITHIN THE SUBSTANTIVE PHASE

It is at the substantive phase that work often begins on the disarmament plan, without necessarily labelling it as such. Disarmament activities could be called reconciliation mechanisms, coalition techniques or standard peace procedures. What is crucial is that the parties understand their importance. What is hoped is that the more the parties discuss disarmament measures, the better they are accepted and the less they will be perceived as a threat.

The best method for dealing with disarmament is to embed disarmament measures within the total content of the process without necessarily addressing them as military issues. Ingredients of disarmament can be gradually introduced while discussing various topics. Parties should not see disarmament as an individual discipline, standing alone and open to separate negotiation, but consider it as it is, as part of a larger picture.

DISARMAMENT WITHIN THE IMPLEMENTATION PHASE

Disarmament takes a special place within the implementation phase, because it is not enough simply to state disarmament measures in an agreement, they must be introduced and applied. Disarmament is not only in the interest of the government. It must therefore play an important role within civil society and be one of the entry points for the involvement of civil society in implementation. The topic of civil society's role in disarmament, however, is beyond the scope of this paper.

The unclassifiable world of peace negotiations

Peace agreements are vague, incomplete, contradictory documents. They are all unique, and cannot be grouped into a common framework. Nevertheless, there is a tacit agreement that certain principles cannot be violated or ignored. No mediator in the field today can afford or would accept to ignore disarmament. If a peace agreement were signed today and did not contain measures to disarm the parties involved, most countries would refuse to witness the agreement, civil society would be furious and victims, or victims' families, would be looking for revenge. In short, peace would be unlikely.

Disarmament must, however, be addressed with great care. It is not an easy topic to deal with, as disarming fighters, especially in countries where bearing a personal arm is a tradition, demands time, patience and creativity. Trying to prepare by working with NSAGs in the shadow of conflict is vital. In contrast to governments, who have been to seminars, learned about negotiation, know the international community, and are at ease sitting at a table, NSAGs may have been in isolation for years, feeding on their own perceptions and rarely in contact with the communities they are fighting. This means their positions are hardened and they are not willing to consider compromise. Building a peace with a NSAG requires a slow uphill struggle of building trust, familiarizing the group with discussion, acquainting it with the skills involved in negotiations, and very slowly accustoming it to the idea that negotiations might provide the way out.

Even with this extra support, does a society emerging from a deeply embedded conflict have the tools or the will to handle disarmament? If the state cannot be counted on to protect its citizens,

is there a need first to create a moratorium under which institutional stability is consolidated before certain action is taken? This is, without doubt, the question Somalia will soon have to deal with, if the resolutions discussed within the Reconciliation Conference can be put on track. If a group's wellbeing depends on what it can deprive the other of, disarmament can mean death. This is why successfully negotiating disarmament with NSAGs is one of the major challenges for peace in the twenty-first century.

Notes

1. Multi-track refers to the technique of shaping negotiations according to the participants. Government members are not dealt with in the same way as rebel groups, and each kind of actor (and type of negotiation) is considered a different track. See Louise Diamond and John McDonald, 1996, *Multi-Track Diplomacy: A Systems Approach to Peace*, Bloomfield, CT, Kumarian Press.
2. See, for example, the work of International Crisis Group (www.crisisgroup.org), Conciliation Resources (www.c-r.org) or Concordis International (www.concordis-international.org).
3. For more on defining and labelling non-state armed groups, see the article by Nicolas Florquin and Elisabeth Decrey Warner in this issue of *Disarmament Forum*.
4. Christopher Clapham (ed.), 1998, *African Guerrillas*, Oxford, James Currey.

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**A CROWDED FIELD:
COMPETITION AND
COORDINATION IN
INTERNATIONAL PEACE
MEDIATION**

David Lanz and Rachel Gasser

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A Crowded Field: Competition and Coordination in International Peace Mediation

David Lanz and Rachel Gasser *

In recent years competition has emerged as a central theme in international mediation as an increasing number of mediation actors seek opportunities to engage in peacemaking. At the same time, mediation coordination mechanisms, such as Groups of Friends, have become standard practice in international peacemaking. This paper seeks to make sense of the dynamics of competition and cooperation in peace mediation today. To this end, it considers three case studies of post-Cold War peace processes: Sudan (North-South, 1994–2005), Kenya (2008) and Madagascar (2009, ongoing).

On the basis of interviews with experts directly involved in these processes, it identifies three forces that drive competition: clashing interests between states, overlapping mandates of mediation actors, and disagreements over the normative basis of international politics. These forces risk undermining peace processes unless the mediators take steps to prevent or mitigate the negative effects of competition. This can be done through 'hierarchical coordination', where a recognized authority takes the lead and allocates roles to other actors, or through 'networked-based cooperation', where partners decide on a division of labour.

Introduction

Mediation has become a crowded field. A multitude of states, international organizations and NGOs have become active as mediators between warring parties in various regions of the world. Generally speaking this is a promising trend. The Human Security Report Project (2011, chapter 4), for example, found that the increase in international activism to promote peace, which includes mediation, has directly contributed to the global reduction in violent conflict in the last 20 years. However, the growth of the mediation field is not unequivocally positive. One negative side effect is the increasing competition between mediators, which poses a serious challenge to the successful conduct of peace processes.

This paper aims to get to the heart of this issue. By examining three case studies, we investigate what drives competition between mediators and suggest how a multiplicity of mediators might be productively managed.

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We use the term 'mediation' to refer to a process of conflict management and resolution, where those in conflict accept the assistance of a third party as they engage in negotiations with each other in order to find mutually acceptable solutions (adapted from Bercovitch 2009, 343). We use the term 'mediation actors' to refer to the organizations that do mediation, such as the UN and the AU, as distinct from 'mediators', by which we mean the individuals involved in mediation processes. The paper focuses on official mediation, often called 'Track 1', which usually involves the conflict parties' decision-makers. We define 'competition' broadly as an attempt by actors to establish their dominance in a particular area – in our case, over the strategy and conduct of official peace negotiations.

The paper makes the following claims. Competition risks undermining peace processes, for example by encouraging 'forum-shopping' by the parties, by diluting resources or by making a common conflict resolution strategy impossible. It is fuelled in three ways: by clashing interests between states, by overlapping mandates of mediation actors and by disagreements over the normative basis of international politics. However, a multiplicity of mediators can be managed in such a way that competition becomes a positive factor in peacemaking. This can be done through 'hierarchical coordination', where a recognized authority takes the lead and allocates roles to other actors, or through 'networked-based cooperation', where partners decide on a division of labour.

The paper is structured as follows. We first formulate the problem and the questions to be asked. We then describe three case studies of post-Cold War peace processes – Sudan (North-South, 1994–2005), Kenya (2008) and Madagascar (2009, ongoing). The studies are based on the published literature and in-depth interviews with key informants.² From these studies we draw implications about what drives competition and how problems might be mitigated, and we conclude with policy recommendations.

Outlining the problem

The issue of mediation competition arises from the proliferation of mediation actors and efforts in the last 25 years. The end of the Cold War freed international organizations from bipolar constraints, allowing them to take on a more active role in collective security and global governance. One consequence was that peacemaking engagements grew exponentially: fivefold from the 1980s to the 1990s in the case of the UN (Human Security Report Project 2011, 67). After 1992 the number of mediation processes per year decreased but the number of mediation actors per process increased significantly (Mason & Sguaitamatti 2011, 17). The same period also witnessed the formation of informal coalitions of states, often called Groups of Friends, to provide support for particular peace processes (Whitfield 2007). Crocker et al. (2002) link the emergence of multiparty mediation to a more permissive international context after the end of the Cold War, which allowed for third-party interventions that would previously have been unacceptable. It was also fostered by the growing international recognition of mediation, which prompted many states, international organizations and NGOs to develop organizational capacities to do mediation (Lanz 2011, 277–80).

² Most of the informants (one for Sudan, three each for Kenya and Madagascar) were directly involved in the respective peace processes. The Sudan informant (A) served as a resource person to the lead mediator. The three Kenya informants (B, C, D) were all members of Kofi Annan's secretariat. Two Madagascar informants were UN officials (E,F) and the third was an NGO expert (G) who had not been directly involved but had closely followed the Madagascar talks. All informants agreed to be cited on condition that they remain anonymous. Owing to their institutional affiliations and obligations, they are not permitted to speak publicly about their mediation engagements.

The multiplicity of mediators is not in itself a bad thing; on the contrary, it can be helpful. In an ideal situation, different mediators bring their comparative advantages to bear as part of a joint effort to make peace. Smith and Smock (2008, 29) point out that mediators' specific skills or expertise make it possible for them to deal with 'particular facets of negotiations' and that multiple mediators working in cooperation 'can isolate spoilers, increase leverage, distribute burdens, divide tasks, create momentum, and provide credible guarantees'. Likewise, on the basis of several case studies of successful multiparty mediation, Crocker et al. (1999a, 33) propose the involvement of different types of mediators during different phases of conflict: for example, where there is low-level conflict it will be appropriate for NGOs working on the societal level and states or international organizations working with top decision makers to be simultaneously involved in order to avert further conflict.

However, not all cases of multiparty mediation have been successful. In some cases mediators launched inconsistent parallel processes or even openly competed with each other. Some scholars have therefore pointed out that clear leadership and coordination are preconditions for successful multiparty mediation (e.g. Kriesberg 1996). 'Coordination' has thus become a buzzword among mediation practitioners. For example, Crocker et al. (1999b, 57–8) posit that multiparty mediation requires the crafting of a coherent political strategy that all mediators adhere to. Likewise, McCartney (2006) identifies coordination as an essential component of third-party involvement, and Nan and Strimling (2004) highlight the need for coordination between mediators in official peace talks and those engaged with opinion leaders from civil society – a process often referred to as 'Track 2'.

In spite of this, coordination has remained elusive, in particular in high-profile conflicts, such as those in Darfur (Flint 2010) or the Middle East (Ghitis 2009), where the negative effects of competition have become increasingly apparent. Scholars and practitioners have highlighted two problems in particular, one pertaining to the conflict parties and the other to the mediators.

The first problem is mentioned by the UN Secretary-General in his 2009 report on mediation: 'Multiple actors competing for a mediation role create an opportunity for forum shopping as intermediaries are played off against one another. Such a fragmented international response reinforces fragmentation in the conflict and complicates resolution' (UN Secretary-General, 2009, 6). Along the same lines, Griffiths and Whitfield (2010, 11) deplore the fact that while mediators are eloquent about 'the benefits of strong leadership and a single negotiating effort', nevertheless 'most have a sorry tale to tell of competition, "poaching", or at least the damage done to a particular effort by the opportunities presented to conflict parties for "forum-shopping"'. The term 'forum-shopping' comes from legal studies and refers to defendants' invocation of competing jurisdictions in an attempt to evade justice. By analogy, in international mediation it refers to a process whereby parties 'shop around' for the mediator who offers them the best deal. This undermines the leverage of the lead mediator as the parties will be tempted to abandon the process when they are faced with tough decisions. The existence of competing parallel processes also distracts the parties. At worst, it degrades mediation to a meaningless exercise, where parties move from one process to another for tactical gain but are unwilling to genuinely work towards peace.

The second problem is that competition between mediators prevents a unified regional and international approach to peacemaking. As Crocker (2007, 6) notes, a crowded mediation field may be problematic 'because when mediators are unable to organize themselves with a sense of common purpose it suggests that there are different "outside" views about how the conflict should be resolved'. As a result, conflict parties will be unsure about what the international community expects of them. This means that the mediation process lacks a clear incentive structure pushing parties in the direction of peace. Moreover,

once the negotiations have commenced, the lack of unity among third parties translates into disagreement about how the process is to be run – where it should take place, which stakeholders it should include, what should go into a peace agreement, and so on. The UN Secretary-General (2012, 30) recognizes this problem in his *Guidance for Effective Mediation*, recommending that mediation actors should ‘work together to agree on the degree of transparency and coordination mechanisms for information sharing’ and ‘cooperate based on a common mediation strategy, ensure consistent messaging to the parties and avoid duplication or overloading the parties with multiple competing processes’.

The scholarly literature and practitioners’ accounts make two things clear. One, the involvement of multiple mediators can either be channelled in a productive fashion or lead to unhealthy competition. Two, when competition does occur, it poses problems for the peace process by fostering forum-shopping and by preventing a unified regional and international approach. Less understood are two related questions. First, why does competition still occur, given that most mediators have expressed a strong commitment to coordination? And second, since it appears that competition is difficult to avoid in some cases, how can the multiplicity of mediators be managed in order to make it support the peace process?

These are the two questions that we sought to answer. Our method was to develop three case studies of post-Cold War multiparty mediation. We selected three peace processes from the 1990s and 2000s, Sudan North-South (1994–2005), Kenya (2008) and Madagascar (2009, ongoing), because this is when the crowding of the mediation field began. The three cases happen to be from Africa but in principle the lessons drawn from them are valid more broadly: they are all typical of post-Cold War peace processes in terms of the range of mediation actors involved in the process, the strategic significance of the respective countries, and the level of violence and rate of escalation of the conflict. The cases also cover the types of crisis in which mediation is usually undertaken: a full-fledged civil war (Sudan), an outbreak of post-election violence (Kenya) and a coup (Madagascar). The paper relies on inductive analysis. This means that it generates theoretical insights and policy recommendations based on the empirical material in the case studies, as opposed to seeking to confirm or reject a predefined theoretical framework (George & Bennett 2005). We are not concerned with building a complete theory as the empirical basis is not sufficiently robust. We do, however, offer general propositions about the problem of competition in international mediation that other studies could elaborate on.

Case study of Sudan (North-South conflict)

Civil war broke out in Sudan in 1983 when a group of southern soldiers in the Sudanese army mutinied and formed the Sudan People’s Liberation Army/Movement (SPLA/M) led by John Garang. Its aim was to re-establish the autonomy of South Sudan vis-à-vis the central government in Khartoum. The main axis of the conflict was North-South, although other peripheral areas, for example the Nuba Mountains and Southern Blue Nile, were later drawn into the conflict. The early 1990s saw the first serious attempts to mediate between the SPLM and the Sudanese government in Khartoum, which had been dominated by Islamists since a coup in 1989 brought the National Islamic Front (later to become the National Congress Party, NCP) to power. However, the mediation initiative, led by Nigeria, did not bear fruit. It was only in 1994 that peace talks were revived by the Intergovernmental Authority for Development (IGAD), an East African regional organization.³ Under Kenyan leadership, IGAD organized four rounds of talks.

³ Founded in 1986, IGAD includes the governments of Sudan, Uganda, Kenya, Djibouti, Somalia, Ethiopia and, since 1993, Eritrea. Until 1996 it was officially called the Intergovernmental Authority for Drought and Development (IGADD). For simplicity, this paper only uses the acronym IGAD.

At the second round, in May 1994, the IGAD mediators presented the parties with a draft Declaration of Principles (DoP), which 'committed them to a peaceful resolution of the conflict and affirmed the right of the south to self-determination, while calling for priority to be given to unity on the basis of agreement on a secular, pluralist democratic polity' (El-Affendi 2001, 585).

For Khartoum, neither self-determination nor secularism was acceptable. It therefore rejected the DoP and eventually pulled out of the IGAD talks. This left the process in limbo, particularly since Sudan's relations with fellow IGAD member states progressively deteriorated. Uganda, Eritrea and to a lesser degree Ethiopia all armed and funded the SPLA. IGAD was therefore no longer a credible mediator. However, the IGAD process was revitalized three years later as the Sudanese government looked for a way to ease the increasing military pressure that both the SPLA and neighbouring countries were exerting. In October 1997 the IGAD talks resumed and in May 1998 the government accepted the DoP as the basis for negotiations (Young 2007, 10). At the same time, IGAD's capacity to mediate was enhanced as the IGAD Partners Forum, which included leading Western donor countries, established a permanent secretariat for the peace process and convinced IGAD to appoint a special envoy. In spite of this, the Sudan talks soon reached deadlock. This was partly due to the outbreak of the Eritrean-Ethiopian war as well as Uganda's military engagement in the Democratic Republic of Congo (DRC), which lessened the pressure on Khartoum. At the same time, there was growing impatience with IGAD. Many perceived the organization as 'proprietary' because it wanted to maintain control of the Sudan peace process (El-Affendi 2001, 592).

As a result of the lack of progress, a number of parallel processes were launched. Most importantly, in 1999 Cairo and Tripoli launched the Egyptian-Libyan Joint Initiative. Their proposal mirrored the DoP, with the notable exception of references to the referendum on self-determination and the relationship between religion and the state, which were deliberately omitted. It also proposed including the Northern opposition parties within the National Democratic Alliance (NDA) in a transitional government. According to the International Crisis Group, the Egyptian-Libyan proposal 'was designed largely to undercut support for the IGAD Declaration of Principles' and it led to forum-shopping (ICG 2002, 160).

We might ask what prompted Egypt, which was in the lead, to embark on a competing process. Part of the reason is that it was concerned about the implications of a self-determination referendum, which it feared could lead to the secession of South Sudan. It did not want another country to make claims on the resources of the Nile, which it considers a matter of national security (Mason 2004, 178). The initiative also reflected a normative stance in line with the position of the OAU, which treated Africa's borders as inviolable. An Egyptian official stated that the self-determination referendum would be 'a contagious phenomenon that would spread to surrounding countries' (quoted in ICG 2002, 18). Moreover, Egypt saw the initiative as a way to keep the Sudanese government, whose Islamist agenda was a cause for concern, in check. It was also a way for Libya and Egypt to promote the NDA opposition parties, with which they had developed close ties (ICG 2002, 164–5).

The Libyan-Egyptian initiative became a serious counter-project to the IGAD process but it was ultimately eclipsed. In 2001 the context changed in such a way that Sudan's North-South conflict became ripe for resolution.⁴ First, the terrorist attacks of 11 September 2001 made Khartoum vulnerable vis-à-vis the US, given that it had hosted Osama bin-Laden in the 1990s. At the same time, Khartoum possessed valuable information about bin-Laden's terrorist network and was thus a potentially valuable partner

⁴ This paragraph draws on a very useful overview provided by De Waal (2007, 15–22).

for Washington in its 'war against terror'. The US signalled to Khartoum that it was willing to normalize relations on condition that the government made peace with the SPLM. Second, the two top negotiators in the talks, the Sudanese Vice-President Ali Osman Taha and John Garang, consolidated their leadership within their own parties, which allowed them to make bold decisions and follow through on them. Third, the regional powers, in particular Ethiopia, acquiesced to a North-South peace deal and refrained from interfering in the process.

In this context the US assumed the leadership of the peace process, together with Norway and the UK, with which it formed the so-called 'Troika'. As a test of the parties' commitment, the US special envoy John Danforth initiated talks on a ceasefire agreement for the Nuba Mountains region. The talks took place in January 2002 on the Bürgenstock in Switzerland. Under the mediation of the US and Switzerland, the parties successfully concluded an agreement after one week of negotiations. According to Norway's representative Hilde Johnson (2011, 33), '[t]his was done without Troika consultation ... taking the British and Norwegians by surprise'. However, the Bürgenstock talks did not compete with the main track but ended up being complementary. As they were merely a test run, it was sensible to hold the talks in a new setting. Moreover, the personal connections of the Swiss envoy Joseph Bucher to the inner circles of the SPLM and NCP leadership proved to be valuable in bringing the parties to the table (Mason 2006).

Subsequently, the US reverted to the IGAD process in Kenya, opting not to continue the talks in Switzerland or hold them in Norway or the UK. The rationale for this decision, according to our Sudan informant, was that 'after the Bürgenstock negotiations, the Americans wanted to have a go at full negotiations. They didn't want a new bazaar but preferred to reinforce an existing structure. IGAD was also useful because it allowed the US to tackle the regional dimension of the conflict and it addressed the "African solutions for African problems" issue' (informant A, April 2012). Consequently, the international partners rallied behind IGAD, resurrected a moribund mediation and made it clear that no competing process would be tolerated.

Three additional points of consensus further fostered a cohesive international approach. First, the international support would mainly be channelled through the Troika. Within the Troika, an implicit division of labour was established, based on the three countries' comparative advantages in Sudan. Johnson (2011, 27) describes the respective roles as follows. She says that '[a]s the former colonial power, Britain was important. The Foreign Office had extensive knowledge of Sudan and a lot of contacts among important people in Khartoum'. She observes that 'Norway had close relations with the Southerners', that Norwegian NGOs 'had been working in the South for decades' and that Norwegian involvement 'would give Southerners confidence in the role of the Troika and the peace process'. Finally, she points out that 'the US had the broadest and most powerful set of carrots and sticks at their disposal'.

Second, the international partners agreed on a 'hierarchy of concerns': the talks would primarily address the North-South conflict between the NCP and the SPLM, excluding other actors, for example Northern opposition parties, and other regions, for example Darfur (De Waal 2007, 19–20).

Third, there was consensus on the need to differentiate the roles of those supporting the process from the outside and those in charge of the process on the inside. The mediation was led by Kenya's special envoy to IGAD, General Lazaro Sumbeiywo. A mediation expert pointed out that 'Sumbeiywo's role was very clear: he defended the process. He wanted to have a team of mediators and experts but this expertise needed to be provided from within the process' (informant A, April 2012).

Sumbeiywo therefore formed a small team consisting of three senior experts who provided substantive inputs during the negotiations. Officials from the Troika and IGAD member states were permitted to observe the talks on condition that they respected certain ground rules: 'Sumbeiywo's golden rule was that they could come and take part, but they needed to be permanent members of the facilitation team under his orders' (informant A, April 2012). So he demanded that any consultations with the parties be transparent. At the same time, he drew on international partners to drive the process forward, for example by asking them to bring their influence to bear on the parties during crucial moments of the negotiations.

The talks officially started in May 2002 in Machakos, a town close to Nairobi. Six weeks later the parties signed the Machakos Protocol, which laid out the basic parameters of a future settlement: a referendum on self-determination for the South and the government's right to have sharia law in the North. The talks proceeded but soon reached a deadlock. They were relocated to a resort in Nakuru and in July 2003 the mediators tabled a proposal for a comprehensive agreement. This backfired as the government walked out of the talks and disparaged the mediators in public. The government subsequently tried forum-shopping, soliciting the AU and the League of Arab States as alternative mediators. However, the Troika's unity of purpose remained firm. They made it clear that IGAD was the only acceptable mediator and fended off attempts to create parallel processes.

At the same time the Troika, and in particular the US, sought to influence the mediation process more directly, for example by pushing the issue of religious freedom. As his authority over the conduct of the mediation was challenged, Sumbeiywo reacted harshly. Martin (2006, 148) says Sumbeiywo was convinced that '[t]he observers' drive to meet the demands of their own political constituencies back home ... had tipped the balance of the process against the interest of the parties', and describes a famous episode in which Sumbeiywo 'threatened to shoot the American envoy ... and then threw him out of his office'. Sumbeiywo's approach raised some eyebrows but it helped to prevent the process from being co-opted by the interests of the observers.

Subsequently, the parties returned to the IGAD process, with a new round of talks beginning in Naivasha in September 2003. The mediators progressively took more of a backseat role as Garang and Taha hammered out the details in private face-to-face meetings. Finally, in January 2005 the Sudanese government and the SPLM signed the Comprehensive Peace Agreement, which officially ended Africa's longest civil war.

Case study of Kenya

In the aftermath of the December 2007 national elections in Kenya more than 1,000 people died and more than 350,000 were displaced (ICG 2008). The violence erupted when the Electoral Commission of Kenya (ECK) announced that President Mwai Kibaki of the Party of National Unity (PNU) had won re-election. However, his main challenger, Raila Odinga from the opposition Orange Democratic Movement (ODM), had won a substantial portion of seats in parliament. The opposition used this to build a case claiming that the presidential elections had been rigged. Indeed, international observers noted irregularities in the tabulation of the votes. The ODM's initial position was that Odinga had won the elections and nothing less than the position of president was acceptable. The PNU, on the other hand, relied on the ECK, and Kibaki was sworn in immediately after the announcement of the results. The ODM-PNU disagreement became

a significant factor fuelling the conflict. This conflict has often been analysed along ethnic lines but it was also driven by poverty, lack of employment and inequality (Human Rights Watch 2008).

Kofi Annan, who became the chief mediator for Kenya, cautions that 'sometimes, when things happen, lots of people rush in and sometimes different mediators come in and it leads to confusion' (quoted in HD Centre 2009, 3). This is precisely what happened in Kenya. Within days of the elections, several high-level personalities descended on Nairobi and offered to mediate between Kibaki and Odinga (Lindenmayer & Kaye 2009, 4–6). The first senior mediator to arrive in Kenya was Archbishop Desmond Tutu, on 2 January 2008. Despite his moral authority and commitment, however, the conflict was not ripe for mediation at that point. His visit was followed on 4 January by that of Jendayi Frazer, US Assistant Secretary of State for African Affairs, but she was not accepted by the parties and left the country after 10 days. Next came four former heads of state from the Africa Leaders' Forum.⁵ Their intervention was more acceptable, especially to the government, which was resisting the internationalization of the crisis. Nevertheless, because Kibaki was still exploring alternative options, and possibly also because the four leaders lacked time and resources, this initiative was not the definitive one. The fourth attempt was led by the AU Chairman John Kufuor. This was not welcomed by the government, which insisted that there was no crisis to be managed. However, Kufuor did get the parties to agree on the principle of ending the violence through dialogue and that this dialogue should be led by a Panel of Eminent African Personalities. Before the establishment of the Panel, yet another mediation attempt was started by the Ugandan President Yoweri Museveni, who represented the East African Community.

The various initiatives were not sufficiently coordinated and they appeared to lack a coherent strategy. Also, the various personalities came to Kenya without making sure that both parties had agreed to their mediation. Once they were on the ground, they met with the parties separately and without coordination. This lack of planning, added to the lack of consensus on who was the best placed mediator, led to forum-shopping as the parties could pick and choose the mediator they thought suited their interests best at any given moment. The early mediation efforts showed the need for an integrated approach and this was the approach adopted by the Panel in the following weeks. The efforts may also have paved the way for the parties to accept mediation since they demonstrated the international community's concern about the situation in Kenya and its determination to help achieve a peaceful resolution of the conflict.

When Kufuor's efforts proved to be inconclusive, he wrote to Annan asking him to be the chief mediator and chair of the Panel. Annan accepted the request. We might ask why Annan was a suitable mediator for Kenya. In his words the answer was: 'I came with unique skills and attributes and also the ability to pick up the phone and speak to anyone around the world ... I had the entire international community behind me' (quoted in HD Centre 2009, 17). Moreover, as a mediation expert closely involved in the process remarked, 'Annan had the right personality, the mandate, the network and broad support that were needed. Who could compete with him?' (informant B, May 2012).

On 10 January both the PNU and the ODM consented to the appointment of Annan as chair of the Panel and this choice was made public. In addition to Annan, the three-member Panel was composed of former President Benjamin Mkapa of Tanzania and former First Lady of South Africa and Education Minister of Mozambique, Graça Machel. The team received a mandate from the AU Peace and Security Council and it garnered worldwide diplomatic support. The Panel was fully supported by the UN Secretary-General,

⁵ They were Benjamin Mkapa (Tanzania), Joaquim Chissano (Mozambique), Katumile Masire (Botswana) and Kenneth Kaunda (Zambia).

who immediately moved to establish a secretariat to support the Panel. Senior officials from the UN Department of Political Affairs (DPA) were deployed at an early stage to head the secretariat, which was composed of staff from the DPA, the AU and the HD Centre, all of whom provided technical and political expertise (Call 2012, 7). Administration and logistics were taken care of by UNDP and the UN Office in Nairobi. In addition, both the DPA and the HD Centre provided senior advisers with specific expertise to support the Panel. The collaboration at the working level functioned well and the three entities were able to work as a team serving the Panel. As one member of the secretariat noted, 'the team was small enough that we basically just cooperated. The political advisers would meet Annan and then tell us at working level what needed to be done and we mostly sorted it out between us'; moreover, 'Annan's previous position as UN Secretary-General as well as his close links with the HD Centre seemed to have helped this arrangement and boosted its efficiency' (informant C, May 2012).

On 22 January the Panel took over the leadership of the mediation. The Panel made it clear from the beginning that there would be one mediation process only, with the full support of the international community, and that the previous absence of coordination in the first weeks of the crisis would not be repeated. In Annan's words: 'we were going to need strong support from the international community and I felt I had to organize it before I got in: get them to understand how I was going to approach the problem, what sort of support I needed from them, and how we should coordinate' (quoted in HD Centre 2009, 3). Annan also insisted that there must be no interference in the mediation and that it was up to the mediator to decide whom to ask for support and when. According to one of our informants, 'there was a clear intention from Annan to "kill any competition" in order to move efficiently and rapidly toward restoring peace' (informant B, May 2012). Annan therefore imposed his leadership from the outset and maintained it throughout the five-week process.

When the Panel arrived in Nairobi, three of the four leaders from the Africa Leaders' Forum were still in town and Annan approached them directly to discuss their plans: 'They thought they could stay on ... and deal with the social aspects by encouraging social cohesion ... And I said "No, I think that will lead to confusion...". We will share our papers with you and maybe at some stage you will be able to help, but I don't think we can both be in town ... And they understood, so they left town' (quoted in HD Centre 2009, 8). Not everybody agreed, however. According to a Panel secretariat member, 'at some point, people around Kibaki tried to use Museveni when Annan was too tough. So Museveni came again as Annan was already engaged. Annan stayed in the Serena Hotel while Museveni was in the Intercontinental. These things gave people the chance to shop for mediators' (informant D, March 2012). However, owing to the broad recognition he enjoyed, Annan managed to discourage such efforts and kept the process on track.

Throughout the mediation, Annan drew on various actors to support the process. There was a deliberate effort to support the work of local mediators who were active in peacemaking at the grassroots.⁶ Annan also drew on international actors to provide leverage. The arrival in the region on 1 February of UN Secretary-General Ban Ki-Moon was a case in point: 'Ban was in regular contact with Annan and would provide any support he needed without interfering in [Annan's] mediation' (informant C, May 2012). In parallel, the US continued to put pressure on the parties by threatening to use 'alternative actions' if the parties failed to come to an agreement (Lindenmayer & Kaye 2009, 11). On 18 February US Secretary of State Condoleezza Rice came to support the Panel's efforts. She emphasized that the world was waiting for an agreement. Annan said, 'I would call Condi to say: "Look, things are not going well and I have just suspended the talks and a statement would be in order"' (quoted in HD Centre 2009, 11).

⁶ On grassroots peacemaking in Kenya, see swisspeace, Center for Security Studies & Berghof Foundation for Peace Support (2009).

Another supporter was AU Commissioner Jean Ping, who regularly encouraged all parties to work with the Panel. A member of his team summarized Annan's approach: 'If he needed someone or a country to do something, he would call them and invite them. But he would orchestrate who, when and how' (informant B, May 2012). Annan described his rapport with the international community as follows: 'They all said, "we know you and we trust you and are fully behind you", which was what I really wanted, and what I needed. And they said "tell us when you need something, tell us when we can help"' (quoted in HD Centre 2009, 4).

For the first month of the process, talks were held between representatives of Kibaki and Odinga at the Nairobi Serena Hotel. On 26 February Annan suspended these talks in order to engage directly with Kibaki and Odinga. By doing this, the Panel sought to make the point that the achievement of peace lay on the shoulders of the two leaders. For the final stage of negotiation, Annan asked President Jakaya Kikwete of Tanzania, who followed Kufuor as AU Chairman, to join the Panel, sending a clear message to the parties that the moment to sign an agreement was upon them. Thus on 28 February the parties signed the Agreement on the Principles of Partnership of the Coalition Government, which stipulated a number of power-sharing arrangements, including the creation of a prime minister post, to be filled by Odinga, while Kibaki remained president. The agreement led to the PNU-ODM grand coalition and paved the way for peace in Kenya.

Case study of Madagascar

A constitutional crisis arose in Madagascar in early 2009. The event that triggered it was Malagasy president Marc Ravalomanana's closure of the TV station owned by his main political rival, Andry Rajoelina, who was then mayor of Antananarivo. This led to mass demonstrations and strikes, in the course of which some 70 people died. At a big rally on 31 January Rajoelina announced the creation of the High Authority of the Transition (HAT)⁷ and declared himself head of state. Ravalomanana's response was to order that Rajoelina be removed from office. This decision provoked unrest among the supporters of Rajoelina. The ensuing rallies were brutally suppressed by government forces, leaving about 30 demonstrators dead. As Ravalomanana gradually lost support, he announced his resignation as president on 17 March and handed over power to a group of army officers. A few hours later, as Rajoelina managed to garner the support of key figures in the military establishment, the officers handed power to him as the leader of the HAT – effectively facilitating a coup d'état (ICG 2010a, 2–12).

Many international bodies condemned the coup. The AU Peace and Security Council suspended Madagascar's membership of the organization on 20 March 2009. The Southern African Development Community (SADC) followed suit on 30 March. Some SADC members even talked of taking military action to restore democracy in Madagascar, although this never became a serious option (Cawthra 2010, 20). The actions of these two organizations were prompted by both principle and self-interest: on the one hand, a rejection of unconstitutional changes of government; on the other, the specific concerns of southern African leaders. The latter was particularly true for Swaziland, which held the Chair of the SADC Organ on Politics, Defence and Security Co-operation at the time. According to an informant, 'given the nature of the regime in Swaziland, there was a concern that something similar could happen in Swaziland. So there was a kind of solidarity between the leaders' (informant G, May 2012). It appears

⁷ The original French term is *Haute Autorité de la Transition (HAT)*.

that other leaders in the region shared this concern (informant E, March 2012). The US government and the EU also condemned the coup, eventually cancelling their aid programmes in Madagascar. The French government joined the chorus of censure of Rajoelina. However, Paris's position was 'ambiguous' given that it had had strained relations with Ravalomanana, who was described as a 'Francophobe' and had challenged some of France's economic interests in Madagascar during his presidency (ICG 2010a, 6–7).

The UN took a different position. After the coup Ban Ki-moon did not openly condemn Rajoelina, but instead called for a 'peaceful and consensual solution in Madagascar' (UN, 2009) – which effectively meant negotiations between the two rivals. This reveals a normative difference, which is relevant for understanding the dynamics of the mediation process later on. In this regard one of our informants said: 'If you take it *sensu stricto*, there is no rule for us saying constitutionalism is sacrosanct. Having said this, our experience has shown that unconstitutional transfers of power rarely lead to stability, with all that this implies in terms of security, human rights and governance, and this is why we get involved. Of course politically it wouldn't be feasible for us to promote an agreement that regional organizations reject, so we have to be sensitive to the norms they endorse, but sometimes we can have a bit more flexibility' (informant F, March 2012).

From the outset the UN focused on mediation as a means to manage the crisis. After deploying a senior official, Haile Menkerios, in early February, the UN Secretary-General appointed Tiébilil Dramé as his Senior Political Advisor for Madagascar one month later. In the beginning, the UN primarily supported the Malagasy Council of Christian Churches (FFKM) in its attempt to mediate between the Ravalomanana and Rajoelina camps. A UN official said: 'At the time, some of us said that there are merits and dangers of having local people mediate. The danger is that it would be more difficult for local people to be impartial. But of course we supported the process' (informant E, March 2012). When the local mediation effort was aborted at the end of February, partly because of divisions within the FFKM, the UN was de facto in charge of the negotiations. At the same time, the AU and the Organisation Internationale de la Francophonie (OIF) appointed special envoys.

The first talks after the coup took place from 9 to 11 April 2009 in the Senegalese Embassy in Antananarivo. In the absence of established political parties in Madagascar, the mediation, which was led by the UN with inputs from the other special envoys, decided to give seats to four 'movements' (*mouvances* in French). These represented the political camps of Rajoelina and Ravalomanana as well as those of two former presidents, Didier Ratsiraka and Albert Zafy, who were thus brought back into Malagasy politics. However, the talks failed. One of the reasons for the failure was the lack of a unified approach on the part of the international community: 'With SADC pushing for the return of the former president, even going as far as threatening military intervention, Ravalomanana saw the option of being brought back [to the position of President] and so he had little incentive to negotiate with the coup leaders' (informant G, May 2012). The failure of the talks showed the need for coordination among the international actors who sought a role for themselves in the process (ICG 2010a, 26). Partly in reaction to this, the AU Peace and Security Council established an International Contact Group that brought together a broad coalition of actors interested in the situation in Madagascar: it included representatives of the UN, the EU, the AU, SADC, the OIF, the Indian Ocean Commission, the Common Market for Eastern and Southern Africa, the permanent members of the UN Security Council and African countries with seats on the Council.

At the first meeting of the International Contact Group on 30 April, the AU Commission took over the lead of the mediation process from the UN. The AU was keen on getting involved as it wanted to consolidate

its role in conflict management in Africa. The question is, why did the UN accept the takeover given that it was the de facto leader, had been involved from the outset, and was the only organization with a presence on the ground? Partly this had to do with the fact that Madagascar was not high on the list of UN priorities – as reflected by the fact that the special envoy was not a full-fledged Special Representative of the Secretary-General (Call 2012, 20). It also reflected the UN's position vis-à-vis peacemaking by regional organizations. As a senior UN official stated: 'The AU says these things are happening in Africa. [They say] "we are building our own standing and so we have to be involved". They are trying to grow, and that's fair and legitimate' (informant E, March 2012). However, while the deference to the AU was officially accepted, the UN team on the ground was sceptical about the AU's ability to manage the process.

Under the AU's leadership a second round of talks was held in the Carlton Hotel at Antananarivo on 22 and 23 May. This resulted in the signing of a Transitional Charter, although the parties remained divided on the main issues. For the first time SADC was present during the talks – which marked a change in its approach to the crisis, from confrontation to mediation (Cawthra 2010, 20). A new phase of the mediation started after the SADC Summit meeting on 21 June, which saw the appointment of former Mozambican president Joaquim Chissano as SADC mediator. As a former president, he was the highest-ranking official among the envoys to Madagascar and accordingly he assumed the leadership of the mediation process. However, this did not represent a decision at the strategic level and in fact the AU insisted that the talks would be carried out under its auspices. This gave rise to an awkward situation where the de facto mediation leadership (SADC), convening authority (AU) and substantive expertise (primarily the UN) were divided among three different organizations. Not surprisingly, the process was characterized by disagreements between the UN and the AU and, in particular, between the AU and SADC. It appears there were 'tensions from the beginning over who would lead the process. There was never a constructive relationship between the AU and SADC – there was a lot of competition between them' (informant G, May 2012). In spite of this, at the operational level coordination worked relatively well thanks to the establishment of the Joint Mediation Team, which included representatives of the UN, the AU, SADC and the OIF.

To drive the process forward Chissano organized a summit in Maputo, where on 9 August 2009 the parties signed a power-sharing deal. The Maputo Agreement foresaw a 15-month transitional period followed by elections, and the formation of a government of national unity with a president, prime minister, deputy prime ministers and two legislative bodies. The posts in the transitional institutions were to be divided equitably between the four movements, although the precise allocation was postponed to a later round of talks (ICG 2010a, 27–9). After the Maputo meeting a series of disagreements broke out between the negotiating parties over who should assume the presidency during the transitional period. A second round of talks in Maputo in late August failed to produce an agreement and it was only in early November that Chissano succeeded in reconvening the parties to discuss the allocation of posts. On 6 November 2009 the parties signed the Addis Ababa Additional Act, which made Rajoelina transitional president alongside two co-presidents from the other movements. A small number of ministerial appointments were left open.

The mediators had very different ideas on how to handle the aftermath of the Addis meeting. Dramé travelled to Antananarivo with the aim of ironing out the last differences between the parties, apparently in consultation with Chissano. The AU, however, considered that the mediation had ended. On 9 November the AU Peace and Security Council released a communiqué calling for the establishment of a follow-on mechanism for the implementation of the Maputo and Addis Ababa agreements (AU 2009, para. 6). At

the same time the AU sent a letter to the UN Secretary-General explaining that, since the process had moved into the implementation phase, there was no need for the UN to mediate (informant F, March 2012). This undermined Dramé's mediation efforts and he withdrew shortly afterwards. In spite of the AU's stance, Chissano organized another meeting between the parties in Maputo in December 2009. However, Rajoelina failed to show up and shortly thereafter abrogated the Maputo Accords.

It remains unclear why Rajoelina backed away from the peace process. However, the mixed messages that he received from the mediators, and the fact that the competition between them openly came to the fore, certainly did not help to keep him on track. In any case, the first phase of multiparty mediation in Madagascar ended in early 2010. The Joint Mediation Team was dissolved and the International Contact Group met for the last time in February 2010. Since the mediation process had stalled, France and South Africa stepped in and launched a bilateral mediation initiative by organizing a summit in Pretoria in April 2010. They attempted to revive the peace process but this initiative was poorly prepared and essentially created a parallel track undermining the official mediation. France's position, in particular, 'was perceived as opposing the mediation effort conducted by Chissano' (ICG 2010b, 16).

Since the failure of the Pretoria Summit, SADC has been in charge of the peace process in Madagascar in a more or less uncontested fashion. However, this has not stopped the turf battles between mediators, nor has it changed the intransigence of the parties. For months Chissano tried unsuccessfully to get the parties and the SADC heads of state to endorse his plan for resolving the Malagasy crisis. Even though SADC never officially cancelled Chissano's mandate, in August 2011 South Africa as the Chair of the SADC Organ effectively took charge of the process (informant G, May 2012). On 17 September the South Africans managed to get the parties to sign a roadmap, which provided for the unconditional return of Ravalomanana and the holding of national elections. However, the agreement has only been partially implemented. Most importantly, Ravalomanana is still in exile, leaving the Malagasy crisis unresolved as of August 2012.

Analysis of the factors that drive competition

Drawing on the material presented in the case studies, this section outlines three factors that drive competition: conflicting interests between states involved in mediation, turf battles between organizations with overlapping mandates and disagreements about the normative basis of international politics and conflict resolution.

Conflicting interests

The first factor driving competition in mediation processes relates to states' clashing interests in international politics. As states try to enhance their political influence, wealth and geopolitical position, they compete with other states. Such competition plays out in mediation processes when states have conflicting interests in a country in crisis. One way the discord may manifest itself is in disagreements over the strategy and conduct of a mediation, for example over the question of who gets a seat at the table. States want to afford a prominent role in the peace talks to those groups with which they have a privileged relationship and which they think will help them advance their interests in a post-

conflict setting. Another way is that conflicting interests may foster the instigation of competing parallel processes. This will happen when a state, concerned that an ongoing process might lead to an outcome that is incompatible with its interests, tries to sabotage the process or, what is often more promising, launches a parallel initiative. The aim is to assert control of the process and to re-route it in a direction that suits the state's interests.

The three case studies above provide ample evidence of how divergent interests between states can lead to competition in mediation. In Madagascar, France favoured Rajoelina over Ravalomanana, who had moved the country somewhat away from the French sphere of influence. France remained the most influential foreign country during Ravalomanana's rule but there was regular friction as he challenged the interests of French entrepreneurs in Madagascar, introduced English as an official language and expelled the French Ambassador in 2008. As noted above, the French government's position was ambiguous, but it seemed to favour Rajoelina. For example, Rajoelina was hosted for several days in the French embassy in early 2009 (ICG 2010a, 6–7). As far as the peace process is concerned, France's position meant that it did not fully support Chissano's mediation, presumably because it was concerned that the process could undermine their ally Rajoelina. Conversely, a number of SADC states were closer to Ravalomanana. Swaziland was his strongest advocate, especially at the beginning of the crisis – a position that seems to have been motivated primarily by regime solidarity (Cawthra 2010, 19). South Africa's stance is more moderate. However, the fact that Ravalomanana has lived in exile in South Africa and that the government insists that he has to be allowed back home suggests that Pretoria saw him as an opportunity, in the words of one observer, 'to wrestle some influence from the French' (informant E, March 2010). In any case, SADC's initial antagonism towards the HAT regime had the effect of compromising Chissano in the Rajoelina camp, making it difficult for the mediator to run an even-handed process.

The case of Sudan also exemplifies how conflicting state interests can generate competition in mediation. Thus, Egypt's launching of the Joint Initiative in 1999, which directly competed with the IGAD process, was primarily motivated by a concern that this process threatened the country's interests. In particular, the Mubarak regime feared that granting the SPLM a referendum on self-determination would lead to an independent South Sudan – as we now know it did – which would in turn affect Egypt's interests related to the Nile. Indeed, Egypt depends heavily on the Nile and it feared that Sudan's break-up could lead to conflict over the Nile waters (Mason 2006, 178). Moreover, IGAD's focus on the NCP-SPLM duo was worrisome for Mubarak because he distrusted the NCP Islamists and had closer ties with the opposition parties within the NDA, especially the Democratic Unionist Party around the Mirghani clan (ICG 2002, 53–6). Libya had similar interests: Gaddafi vacillated in his relations with the Khartoum Islamists but maintained strong ties with Sadiq al-Mahdi, Sudan's former prime minister and head of the Umma Party. Launching a parallel process was therefore a way for Egypt and Libya to bring back their partners, who they knew would see to the protection of their national interests.

Overlapping mandates

The second factor that drives competition operates at the inter-organizational level: turf battles between different mediation actors. It springs from the nature of global security governance, which is characterized by overlapping hierarchies and mandates. This is particularly true for the relationship between the UN and regional organizations. Although Chapter VIII of the UN Charter addresses this relationship, it remains

unclear whether the UN is superior or whether, by virtue of the principle of subsidiarity, the primary competence lies with regional organizations (Barnett 1995). This has become a problem in the field of mediation as the role and capacity of regional and sub-regional organizations in conflict management has grown since the end of the Cold War, in particular in Africa. At the same time, the UN has seen its mediation role strengthened. A range of private actors – NGOs and eminent individuals – have also become involved, claiming a specialist competence to be mediators. This results in a situation where, in a specific crisis, a multitude of organizations assert a mandate to mediate. In the absence of clear hierarchies, in particular between the UN and regional organizations, this leads to competition as the different organizations, by virtue of their mandate, assert their competence or jurisdiction vis-à-vis other actors.

The three case studies exemplify the problem of overlapping mandates. In Madagascar the UN, the AU and SADC all had mandates to mediate: the UN as the guardian of the global system of collective security, the AU as the foundation of the African security architecture, and SADC by virtue of the principle of subsidiarity. The problem was not bad intentions or hidden agendas; it was that all three organizations had a legitimate claim to lead the Madagascar peace process and there was no mechanism to clarify the hierarchy and division of labour between them. The competition did not, at first, openly come to the fore, but it resulted in extensive negotiations that delayed the process – indeed, Chissano was only appointed in June 2009, three months after Rajoelina's de facto coup. The organizations eventually settled on an awkward arrangement, where everybody was included in the process, but without agreeing on a common strategy and division of labour. The discord between the three organizations became evident after the Addis Ababa Additional Act of November 2009. This undermined the process as it lessened the pressure on Rajoelina to follow through on his commitments.

Competition as a result of overlapping mandates also affected the Kenyan mediation. In the weeks following the outbreak of violence, several high-level representatives of different organizations descended on Nairobi – Desmond Tutu as the Chairman of the Elders, Jendayi Frazer representing the US government, John Kuffour as the President of the AU, Yoweri Museveni as the Chairman of the East African Community and four former heads of state from the Africa Leaders' Forum. These actors either had a specific mandate, as in the case of the AU, or they possessed a special competence that qualified them as mediators: Tutu as a moral authority, Frazer representing Kenya's most powerful ally, Museveni as the leader of a friendly neighbouring state representing the region and the African leaders as the voice of the African continent. While considerations of prestige may have played a role, all the actors were genuinely interested in making peace. Good intentions notwithstanding, in the absence of a coordination mechanism their efforts resulted in an incoherent flurry of initiatives, which only stopped when Kofi Annan got involved and asserted his leadership.

Clashing norms

The case studies reveal a third factor that drives competition, which is related to the normative basis of world politics. It springs from states' conceptions of the principles and values underpinning world order and, related to this, their conceptions of what constitutes appropriate behaviour in international politics. Conflicts arise when states' normative frameworks clash. One example is the clash between sovereignty and humanitarian intervention, the former postulating non-interference in the internal affairs of other states, the latter calling for external intervention if a state is unable or unwilling to protect its

citizens (Ayoob 2002). Mediation processes are an arena where conflicts over norms play out, and such clashes foster competition between mediators. In one scenario, third parties fear that the outcome of a peace process will not accord with their commitment to certain norms, which leads them to undermine an existing process or launch a parallel initiative. In another scenario, third parties' clashing norms lead them to disagree about the overall strategy for managing conflict, for example with respect to the use of military force. This makes it difficult for a mediation process to start or undercuts mediators' leverage in a process that is underway.

The case studies provide evidence of both scenarios. In Sudan normative considerations contributed to the competition between mediators, even if they were not the primary driver. Thus one source of scepticism regarding the IGAD process, prompting Egypt to launch a competing initiative, stemmed from a normative commitment to sovereignty based on belief in the inviolability of borders – a norm that the OAU had long championed. The basic idea is that respect for existing borders helps to safeguard order and stability: if the international community allowed borders to be redrawn and new states to be created, the result would be chaos and conflict. Therefore, the creation of new states – a possibility that the referendum for the independence of South Sudan provided for – was not a legitimate outcome of a peace process.

The Madagascar process illustrates the conflict over norms more starkly. At the beginning of the crisis SADC took a strong stance against the HAT regime. It even contemplated using force to remove Rajoelina from power. As a result SADC did not support the early mediation effort by the FFKM and the UN, which, as mentioned above, meant that Ravalomanana had little incentive to negotiate. Among other factors, SADC's position was motivated by the belief that unconstitutional changes of government are unacceptable, a principle that both SADC and the AU are formally committed to. SADC later changed its position and came around to supporting mediation as a remedy for the crisis. However, its earlier stance had serious implications. It undermined SADC's impartiality in the eyes of the parties and it made other third parties, especially France and the UN, reluctant to accept SADC's ability to play a mediating role (informant G, May 2012). It also shaped SADC's substantive position as the organization insisted on the return to Madagascar of the former president Ravalomanana – indeed, in the last two years this has been the most contentious issue in the peace process.

Some ways to mitigate competition

The case studies shed light not only on the factors that drive competition but also on ways to manage multiple third party peacemakers in a productive fashion. Indeed, the studies provide several examples of cooperation between mediators. We can distinguish two types of cooperation, reminiscent of the two types of international intervention distinguished by Paris (2009, 61–4). One is a top-down approach where a lead agency, whose superior hierarchical position is recognized, coordinates other agencies by assigning specific tasks to them – we call this 'hierarchical coordination'. The other approach involves agencies operating on the same hierarchical level who form a network and, having a common objective, agree on a division of labour – we call this 'network-based cooperation'. As the evidence from the case studies suggests, both models can be used to deal with the multiplicity of third parties in mediation processes.

Hierarchical coordination

The personality and stature of the lead mediator are the decisive factors here. Hierarchical coordination becomes possible when the lead mediator commands sufficient respect to be able to direct the other mediators like an orchestra conductor. For hierarchical coordination to work, two conditions are necessary: the lead mediator's authority must be recognized by the international community, the parties involved and the society affected by conflict, and the mediator must be able to nip in the bud any challenges to his or her authority. These conditions enable the mediator to coordinate other third parties by assigning specific roles to them, by drawing on their expertise, by borrowing their leverage and by getting them to leave if their involvement is no longer useful.

Kofi Annan's mediation exemplified this approach in Kenya. As a former UN Secretary-General he was a respected leader with recognized moral authority and extensive experience in crisis management. He also had a mandate from the AU and the support of the UN Security Council and various governments. This meant that he enjoyed broad recognition, which allowed him to do two things that were essential for the success of the Kenya mediation. First, he was able to coordinate other third parties, including some of those in his mediation team, to provide specific expertise or bring leverage to bear on the parties when needed, and occasionally to draw on others, such as the US government, when the process needed a boost. Second, he was able to fend off attempts by third parties to interfere with his process by creating parallel tracks, Museveni's involvement being a case in point. By comparison, in Madagascar Joaquim Chissano never acquired the authority and recognition that Annan mustered in Kenya. As a result, he was unable to defend his process against other third parties challenging it: France and the AU in 2009 and South Africa in 2011.

Network-based cooperation

The case studies also provide evidence of the second type of collaborative approach, where third parties work together. They agree on the need to end conflict. They settle on an overall strategy for the mediation process and a rough division of labour: who runs the process, what its basic architecture is, who liaises with the parties to build confidence and who provides leverage. What fosters cooperation in this approach is not the presence of an overarching authority but a unity of purpose, compounded by willingness to invest political and financial capital in peacemaking. The lead mediator plays an important role in running the process but he or she is not as indispensable as in the case of hierarchical coordination. The unity of the process comes from a shared understanding among the third parties involved.

The peace process in Sudan after 2002 is a case in point. The collaboration within the Troika and the division of labour between the Troika and the IGAD mediation team are examples of network-based cooperation. Even if their relationship was contentious at times, the roles of the different actors were clear – IGAD ran the process and secured regional buy-in, and the Troika provided leverage and liaised with the parties to secure their commitment to the process. Two factors were crucial in this arrangement: the inclusion of the most influential actors in Sudan, the NCP and the SPLM, and their common objective of making peace. We can also see elements of network-based cooperation in the Madagascar process. For example, the third parties worked together in the Joint Mediation Team. However, since there was no agreement between these parties at the strategic level, the cooperation between them ultimately fell apart. Madagascar also saw the formation of the International Contact Group through which external

support for the mediation process was supposed to be coordinated. However, this Group was too broad and, most importantly, its members did not share a unity of purpose comparable with that of the Troika in Sudan.

Conclusion

In analysing the dynamics of competition and coordination in international peace mediation, we have advanced three arguments. First, competition between third parties is a serious problem in contemporary mediation processes. If left unaddressed, it risks undermining peace processes by fostering forum-shopping among the conflict parties and preventing a unified international approach. Second, competition and disagreement between third parties are fuelled by a multitude of factors, the importance of which depends on the context. These factors include states' diverging geopolitical interests, mediation actors' overlapping mandates, and conflict over norms. Third, the multiplicity of third parties can be an asset in mediation processes if it is effectively managed. This can happen where there is a top-down approach, with a lead mediator coordinating the actions of other actors, or where there is a network whose members agree on a division of labour based on the common goal of peace.

Our analysis has some implications for policymakers. But we must raise two caveats. First, coordination between mediators is not a panacea for resolving intractable conflicts. The agency of mediators, which includes decisions about whether or not to coordinate with other third parties, clearly matters. However, if the context is not conducive to peacemaking and the conflict parties have a preference for war over peace, then even the most elaborate coordination mechanism is unlikely to be effective. Second, competition between mediators is an inherently political phenomenon. Technical remedies, such as the establishment of a joint mediation team or a Group of Friends, can make a difference but they are unlikely to do away with competition completely if its driving factors remain in place.

That said, we can make five recommendations for policymakers involved in planning and conducting mediation processes:

- *The choice of the lead mediator matters.* To prevent competition, it is important that the lead mediator enjoys broad acceptance and support. Such acceptance and support are fostered by a high-level personality who commands respect and authority, has a proven track record in conflict resolution, is given a clear mandate and adequate resources by the relevant international or regional body, and is thoroughly prepared for his or her mission. The mediator also has to be accepted by all the conflict parties involved in the negotiations.
- Organizations that frequently engage in mediation, and whose mandates potentially overlap, should *establish standing inter-organizational coordination groups*. These groups can foster awareness of the need to collaborate and they can divide roles in specific peace processes. Where such groups have already been established – for example the UN-AU Joint Task Force on Peace and Security – it is important to secure the buy-in of the senior leadership of the respective organizations and to focus on operationalizing guidelines developed by the coordination group.
- To complement standing coordination groups, organizations with overlapping mandates should *devise specific procedures outlining how they will work together in mediation*. These procedures should divide roles and clarify issues such as political leadership, lead mediator, composition of the mediation team, logistics, finances and administrative matters. Two different sets of procedures

should be developed on the basis of the two models of cooperation in mediation processes: the subsidiarity model – where one organization is in charge and the others play supporting roles – and the partnership model – where two or more organizations lead the process on an equal footing.

- Mechanisms to institutionalize coordination among international actors in a given peace process, for example in *international contact groups or Groups of Friends*, are useful, provided that the members of such groups share a common agenda and wield significant influence over the conflict parties. Smaller groups that include only the key actors are therefore usually more effective than broad-based coalitions.
- Mediation organizations must learn from the past. Rather than identifying ‘best practices’ of coordination – which tend to be overly general and thus of limited utility in guiding action in specific cases – it is more promising to look at negative cases. To avoid past mistakes, it would be useful to *devise a ‘not to do’ list* that outlines practices that have proven to fuel harmful competition in mediation processes.
- These recommendations are pertinent for policymakers and mediators at different levels, including the leadership of organizations carrying out mediation, staff at headquarters involved in the planning and support of mediation processes, and those active on the ground in making peace between conflict parties. While the mediation field will remain crowded, the chances of making peace will be enhanced if more is done to mitigate the harmful effects of competition between mediators.

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WORKING PAPERS

Working Paper no. 5

**NO OWNERSHIP, NO PEACE:
THE DARFUR PEACE AGREEMENT**

Laurie Nathan
Crisis States Research Centre

September 2006

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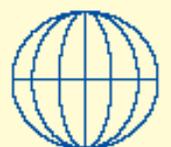
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**No Ownership, No Peace:
the Darfur Peace Agreement**

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Introduction

In 2003 fighting broke out in the Darfur region of Sudan as rebel movements mobilised against the Government's political and economic marginalisation of their communities. Media reports tended to portray the conflict as a struggle between African farmers and Arab herdsmen over scarce resources but the root causes lay more deeply in Khartoum's oppressive and exploitative relations with the peripheries of Sudan since pre-colonial times.¹ The Government and its proxy force, the Arab militia known as the Janjaweed, responded to the rebellion with such systematic and large-scale destruction of people and villages that they were accused by the US administration and others of committing genocide.² By 2006 an estimated 350,000 people had been killed and almost two million people had been displaced.³

In late 2005 the seventh round of the Inter-Sudanese Peace Talks on the Conflict in Darfur commenced in Abuja, Nigeria, under the auspices of an African Union (AU) mediation team. The mediation was led by Salim Ahmed Salim, the former Secretary-General of the Organisation of African Unity, and supported by the UN, the UK, the US and other international partners. The purpose of the talks was to broker a comprehensive peace agreement between the Government of Sudan and the main rebel movements in Darfur, the Sudan Liberation Movement/Army (SLM) and the Justice and Equality Movement (JEM). On 5 May 2006 the Darfur Peace Agreement (DPA) was signed by the Government and by Minni Minawi, the leader of one of the two SLM factions, but was rejected by JEM and Abdel Wahid al Nur, the leader of the other SLM faction.⁴

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¹ On the origins and causes of the conflict, see Julie Flint and Alex de Waal, *Darfur: A Short History of a Long War*. Zed: London and New York, 2006; and International Crisis Group, "Unifying Darfur's Rebels: A Prerequisite for Peace", *Africa Briefing*, no. 32, October 2005.

² See, for example, Milton Leitenberg, "Deaths in Wars and Conflicts in the 20th Century", *Occasional Paper*, no. 29 (3rd ed.), Peace Studies Program, Cornell University, 2006, pp. 34-60; and Nicholas D. Kristof, "Genocide in Slow Motion", *New York Review of Books*, vol. 53, no. 2, February 2006.

³ United Nations High Commissioner for Refugees, *The State of the World's Refugees 2006*, April 2006, retrieved from www.unhcr.org on 6 September 2006.

⁴ The SLM was established in 2003 and soon split into two factions. The Minawi faction was stronger militarily and its fighters were drawn chiefly from the Zaghawa people who comprise roughly 8 per cent of the Darfur population. Abdel Wahid's support was located mainly in the Fur tribe, which constitutes between a quarter and a third of the population. JEM is a small, Islamist organisation that, unlike the SLM, has a national political agenda. See Flint and de Waal, *Darfur: A Short History*; and International Crisis Group, "Unifying Darfur's Rebels".

The Agreement did not achieve peace and in certain respects it heightened conflict. Following the signing ceremony there were violent protests against the DPA in Darfur. More ominously, the Government and Minawi formed an offensive military alliance and attacked communities that support Abdel Wahid, while the Janjaweed's rampages continued unabated.⁵ There was widespread opposition to the deal within the Minawi group, with some commanders announcing a suspension of the DPA.⁶ Conversely, four senior officials from JEM and the Abdel Wahid faction signed a declaration of support for the Agreement and several leaders in Abdel Wahid's grouping broke away because of his stance. As the International Crisis Group (ICG) put it, the DPA "accelerated the break-up of the insurgency into smaller blocs along loose ethnic lines".⁷ In order to counter this tendency, JEM and rebel leaders from different factions founded the National Redemption Front.

At the end of June 2006 Jan Pronk, the UN Secretary-General's Special Representative in Sudan, warned that there was a significant risk that the DPA would collapse. He argued that it was a good text and an honest compromise between the extreme positions taken by the parties in Abuja, but it did not resonate with the people of Darfur and was meeting growing resistance from internally displaced persons (IDPs) in particular. They believed that the Agreement "has been forced upon them and, rather than meeting the interests of all parties somewhere halfway, only strengthens the position of the government and [Minawi's] minority tribe, the Zaghawa".⁸ Pronk concluded that the DPA, though not yet dead, was severely paralysed. At the time of writing (mid-September 2006), the Government had mounted a major offensive aimed at crushing the rebellion and there seemed to be no prospect of ever resuscitating the DPA.⁹

Intended to address the causes of the conflict, the DPA contains provisions on power-sharing and political representation; wealth-sharing and compensation for the victims of the conflict; ceasefire arrangements and long-term security issues; and a Darfur-Darfur Dialogue and Consultation designed to facilitate local dialogue and reconciliation.¹⁰ The content of the DPA has been criticised by a number of analysts,¹¹ including the ICG whose commentary sparked a heated exchange with the AU.¹² The current paper does not cover this ground. It focuses instead on the process of negotiations and mediation in Abuja between November 2005 and May 2006, and

⁵ Julie Flint, "Where Is the African Union in Darfur?", *The Daily Star* (Lebanon), 12 July 2006; "Sudan Military Reported To Be Aiding Rebel Attacks", *Sudan Tribune*, 12 July 2006; and International Crisis Group, "Darfur's Fragile Peace Agreement", *Africa Briefing*, no. 39, June 2006, pg. 5.

⁶ "After 5 May Deal, SLM Minawi Faces Divisions and Defections", *Sudan Tribune*, 19 June 2006; and "Tension Mounts within the Darfur SLM-Minawi Streams", *Sudan Tribune*, 1 July 2006.

⁷ International Crisis Group, "Darfur's Fragile Peace Agreement", pg. 1.

⁸ Jan Pronk, "Darfur Agreement is Severely Paralysed", *Sudan Tribune*, 1 July 2006.

⁹ See "Army Unleashes Military Offensive in Darfur", news report, UN Integrated Regional Information Network, 1 September 2006; and "Sudan's Darfur Military Action Illegal – Annan", *Sudan Tribune*, 12 September 2006.

¹⁰ For a comprehensive discussion of the DPA by a member of the AU mediation team, see Alex de Waal, "Explaining the Darfur Peace Agreement", 7 June 2006, retrieved from the website of the Friends Committee on National Legislation, www.fcni.org, on 1 September 2006.

¹¹ See, for example, "Sudan: It's the Government, Stupid", *Africa Confidential*, vol. 47, no. 10, 12 May 2006; and Julie Flint, "Pursuing an Illusion of Peace in Darfur", *The Daily Star* (Lebanon), 23 May 2006.

¹² See International Crisis Group, "Darfur's Fragile Peace Agreement"; "AU Reacts to ICG Report on Darfur Peace Deal", *Sudan Tribune*, 25 June 2006; and Gareth Evans, "Letter to Ambassador Said Djinnit, African Union Commissioner for Peace and Security", 28 June 2006, retrieved from the ICG website, www.crisisgroup.org, on 11 July 2006.

seeks to show that the manner in which peace agreements are prepared and concluded is as important as their content.

In summary, the Abuja talks had three primary dynamics: the negotiating parties were unwilling to engage in negotiations and failed to forge agreements; the AU and its international partners, desperate for a quick accord, pursued a counter-productive strategy of deadline diplomacy that inhibited progress; and the mediators were consequently unable to undertake effective mediation. As a result of these dynamics, the DPA was not a negotiated settlement and its fulfilment was bound to experience severe difficulties.

The Abuja process reinforced two general lessons regarding mediation in civil wars. First, these wars are not conducive to a viable quick accord. They have multiple historical, structural, political, social and economic causes that are complex, deep-rooted and intractable. The difficulty of resolution is compounded greatly by the protagonists' mutual hatred and suspicion. However grave the situation, mediators have no option but to be patient. Second, an enduring peace agreement cannot be forced on the parties. It has to be shaped and owned by them since it cannot be implemented without their consent and co-operation and its sustainability requires their adherence to its provisions in the long term. These lessons are frequently ignored by states and multinational organisations that seek to end civil wars through power-based diplomacy rather than confidence-building mediation.¹³

This paper is based on my participation in the Darfur mediation process although I have tried as much as possible to substantiate my personal observations and claims with reference to published material.¹⁴ The paper is organised as follows: section 1 examines the deadline diplomacy and the failure of the AU and its international partners to distinguish between getting the parties to sign a peace agreement and obtaining their genuine consent to its terms and execution; section 2 considers the psycho-political dynamics, balance of power and other factors that gave rise to the parties' reluctance to enter into real negotiations; and section 3 explores the ways in which the deadline diplomacy prevented the mediators from doing a proper job.

A diplomacy of deadlines

The seventh round of the Darfur peace talks began at the end of November 2005, the previous rounds having produced nothing more than a Declaration of Principles and a series of ceasefire accords that were violated regularly by the parties.¹⁵ Nevertheless, on a visit to Abuja in early 2006 Jack Straw, the British Foreign Secretary, admonished the parties for having failed to meet the 31 December 2005 deadline set by the UN Security Council for a comprehensive peace agreement.¹⁶ In January 2006 Pronk proposed a new cut-off date of February.¹⁷ In early February

¹³ See Laurie Nathan, "When Push Comes to Shove: The Failure of International Mediation in African Civil Wars", *Track Two*, Occasional Paper, vol. 11, no. 3, 1999.

¹⁴ I joined the AU mediation team in December 2005 and was a member of the Security Arrangements Commission and the Co-ordinators' Forum until mid-March 2006.

¹⁵ On the ceasefire violations see, for example, "Press Statement by Ambassador Baba Gana Kingibe, Special Representative of the Chairperson of the African Union Commission, on the Deteriorating Security Situation in Darfur, Khartoum, 1 October 2005", African Union, Khartoum, 1 October 2005.

¹⁶ Jack Straw, "Darfur at the Crossroads: Foreign Secretary's Speech to the Peace Talks on Darfur, Abuja, 14 February 2006", retrieved from the website of the Government News Network, www.gnn.gov.uk, on 16 March 2006.

the AU Commissioner for Peace and Security, Said Djinnit, told the mediators and the parties to wrap up by the end of the month. In March the AU Peace and Security Council called for the conclusion of a comprehensive agreement by the end of April.¹⁸ The UN Security Council endorsed this date as the final deadline.¹⁹

As they slipped from one monthly deadline to the next, senior officials from the UN, the AU, the EU and donor governments complained that the negotiations were proceeding too slowly. Their constant refrain was that the ‘patience of the international community is running out’.²⁰ They threatened the parties with sanctions and warned that funding for the mediation could dry up in the absence of a quick accord. For example, Jack Straw, whose government was one of the major funders of the Abuja process, told the parties in January that “the international community has poured a lot of money, time and effort into the talks” but “our patience is not unlimited. If the parties do not reach an agreement here soon, we, with the AU, will need to start looking at the alternatives”.²¹ On an earlier visit to Abuja the Dutch Prime Minister had issued a similar warning.²²

The posturing over deadlines was ignored by the Sudanese parties because it was not backed up by action. It was meant to constitute pressure on the parties and convey the international community’s seriousness about ending the conflict, but the deadlines came and went without any negative repercussions. They were consequently not an effective form of pressure and indicated a lack of seriousness on the part of the international community, which talked loudly on Darfur but carried a small stick. In July 2006 a senior Sudanese government official was quoted as saying that “the United Nations Security Council has threatened us so many times, we no longer take it seriously”.²³

Moreover, the monthly deadlines for a comprehensive peace agreement would have been fantastically unrealistic even if the Sudanese parties had been negotiating in earnest, which they assuredly were not. By comparison, in the early 1990s negotiations aimed at reaching a settlement took over two years in the case of the Mozambican civil war and over three years in South Africa.²⁴ Whereas these processes experienced steady progress punctuated by blockages and breakthroughs, the Abuja talks and preceding rounds were characterised by deadlock and an absence of negotiations. This did not deter the political leaders who were driving the deadlines. For example, in mid-April the Chairperson of the AU, President Sassou-Nguesso of the Republic

¹⁷ “UN Envoy Slams Darfur Rebels Position in Abuja Talks”, *Sudan Tribune*, 24 January 2006.

¹⁸ African Union, “Communiqué”, PSC/MIN/Comm.(XLVI), Peace and Security Council, 46th Meeting, 10 March 2006, Addis Ababa.

¹⁹ “Security Council Calls for Smooth Transition to UN Operation in Darfur”, UN News Centre, 11 April 2006.

²⁰ See, for example, the comments by Said Djinnit in “The AU Commissioner for Peace and Security Meets the Sudanese Parties and the International Partners”, press release no. 29, African Union, Abuja, 10 February 2006; and the comments by Hilary Benn, the UK’s Secretary for International Development, in “Sudan: It’s the Government, Stupid”, pg. 4.

²¹ Straw, “Darfur at the Crossroads”.

²² “Sudan Patience Wearing Thin”, AFP news report, 4 October 2005, retrieved from www.news24.com on 14 July 2006.

²³ John Prendergast, “A Dying Deal in Darfur”, *Boston Globe*, 13 July 2006.

²⁴ See Cameron Hume, *Ending Mozambique’s War*. Washington DC: US Institute for Peace, 1994; and Alistair Sparks, *Tomorrow is Another Country: The Inside Story of South Africa’s Negotiated Revolution*. London: Heinemann, 1995.

of Congo, failed to make headway in high-level discussions with the parties and promptly asked the mediators to quicken their preparation of a comprehensive agreement.²⁵

An informed commentator has noted that “the best of the AU’s experts in Abuja believed [that the target of] April was unrealistic, off by a couple of months at least”.²⁶ Nevertheless, five days before the 30 April deadline the mediation team presented the DPA to the parties on a take-it-or-leave-it basis, giving them less than a week to read, comprehend, debate within their ranks and then endorse an 86-page English-language document aimed at achieving a ceasefire and addressing the causes of a civil war through a set of complicated security, political, economic and administrative arrangements.

The five-day timeframe for the approval of the Agreement would have been wholly unreasonable and impractical in any negotiations to end a civil war. It was especially so in the context of Abuja: the parties disagreed profoundly on virtually every one of the critical issues covered by the DPA; they were confronted in the document by mechanisms and arrangements they had not considered previously; they loathed each other and doubted that their opponents would implement their undertakings in good faith, if at all; the rebels had no opportunity to inform and consult their members and constituents in Darfur; and many of them had great difficulty understanding complex documents. Exacerbating this difficulty, the version of the DPA in Arabic, the language of choice for most of the rebel negotiators, was only completed on 28 April and contained some significant mistranslations and ambiguities.

The rebels asked the mediators to give them three weeks to study and comment on the document.²⁷ When they were turned down, they rejected the DPA. They complained that it watered down proposals made earlier by the mediation team, favoured the Government and did not address adequately the political, economic and security rights and demands of Darfurians.²⁸ They also objected to the imposition of a deadline and to the AU having “fixed a time that was never realistic or reasonable for studying the Project, given that the translated (Arabic) version was made available only one day before the deadline stipulated by the Mediation”.²⁹ The Government, on the other hand, stated that it was prepared to endorse the Agreement despite its reservations.

At the request of the international partners and President Olusegun Obasanjo of Nigeria, Salim extended the deadline by 48 hours and then a further 48 hours.³⁰ In this brief period the lethargic pace of the talks changed dramatically. There was a frenzy of behind-the-scenes deals, counter-deals, offers and threats as various leaders and officials – including Obasanjo; Robert Zoellick, the US Deputy Secretary for State; and Hilary Benn, the British Secretary for International Development – endeavoured to stave off collapse. They offered the rebel movements guarantees

²⁵ “Sudanese Parties Resume Direct Negotiations over Darfur Conflict”, *Sudan Tribune*, 11 April 2006.

²⁶ Julie Flint, “Without Foreign Chancelleries and Hollywood’s Finest, Can Darfur Peace Deal Succeed?”, *Pambazuka News*, no. 254, 11 May 2006.

²⁷ Abaker Mohamed Abuelbasha (one of Abdel Wahid’s negotiators in Abuja), “On the Failure of Darfur Peace Talks in Abuja”, *Sudan Tribune*, 25 August 2006.

²⁸ “Darfur Rebel SLM Rejects Integration of Its Forces in the Army”, *Sudan Tribune*, 30 April 2006; and “Darfur SLA/JEM Joint Press Statement on Proposed Peace Deal”, *Sudan Tribune*, 1 May 2006.

²⁹ “Darfur SLA/JEM Joint Press Statement”.

³⁰ “AU’s Salim Reveals Abuja Handicaps, Last-Minute Compromise”, *Sudan Tribune*, 22 May 2006.

regarding the implementation of the DPA, tabled a list of non-negotiable amendments aimed at meeting the rebels' concerns, and threatened them with collective and individual sanctions.³¹

Minawi, who was regarded by the African and foreign dignitaries as the most important of the rebel leaders because he had the largest fighting force in Darfur, came under particularly strong pressure.³² He was warned that his failure to sign the Agreement might lead to his name being added to the list of Sudanese individuals on whom the UN Security Council had imposed sanctions.³³ At literally the last minute he relented. He appealed for more time to bring the other rebel movements on board but the 'patience of the international community' had finally run out and there would be no waiting for Abdel Wahid and JEM. On 5 May Minawi and the Government's chief negotiator signed the Agreement at a ceremony hosted by Obasanjo. A group of Abdel Wahid's colleagues, believing his stance to be unreasonable, joined the ceremony to declare their support.

After the ceremony the AU set a deadline of 15 May for Abdel Wahid and the JEM leaders to add their signatures. Abdel Wahid beseeched the mediators to help him resolve his outstanding concerns.³⁴ Two members of the mediation team remained in Abuja to do this and the AU extended the cut-off date to the end of May and then to the beginning of July. The decisive deadline had passed, however, since the DPA could not be amended after it had been approved by the Government and Minawi. Even the relatively modest demands of Abdel Wahid were rejected by the international partners on the grounds that the DPA could not be renegotiated.³⁵ The process ended in the first week of June when Abdel Wahid reneged on a commitment to attend a meeting with Minawi and the First Vice-President of Sudan, Salva Kiir.³⁶ He thereafter called in vain for the UN to take over the mediation.³⁷

Salim had previously told the parties that "the only page [of the DPA] that really matters is the last page, which has the space for the signatures of the Parties".³⁸ His point was that the document was worthless without those signatures, but the more important point was surely that the DPA was worthless without the parties' genuine endorsement. At the climatic showdown in Abuja, as with the preceding deadline diplomacy, the AU and its partners appeared to have lost sight of the distinction between getting the parties to sign an agreement and obtaining their real commitment to its terms and implementation. The import of this distinction was already starkly evident: previous rounds of talks had produced several ceasefire accords that the parties had signed and then breached systematically and brazenly. So it was with the DPA. In the months

³¹ See "Darfur Peace Accord a Battle of Its Own", *Washington Post*, 9 May 2006.

³² International Crisis Group, "Darfur's Fragile Peace Agreement", pg. 3.

³³ "Sudan: It's the Government, Stupid", pg. 3.

³⁴ These concerns related to compensation for victims of the violence in Darfur; the involvement of the SLM in monitoring the disarmament of the Janjaweed and the protection of IDPs and refugees as they returned to their homes; and stronger provisions on political representation. See "SLM's Nur Urges UN's Annan to Intervene in Darfur Peace Process", *Sudan Tribune*, 24 May 2006.

³⁵ Information provided by Alex de Waal, 7 September 2006.

³⁶ For an account of the mediators' efforts after the signing ceremony, see "AU Reacts to ICG Report".

³⁷ "Text – Darfur SLM Says AU Deal 'Incomplete', Demands UN Mediation", *Sudan Tribune*, 4 June 2006.

³⁸ "Statement by Dr Salim Ahmed Salim, AU Special Envoy and Chief Mediator, 30 April 2006", African Union, 30 April 2006.

following their formal approval of the Agreement, the Government and Minawi repeatedly contravened its security provisions.³⁹

In the assessment of one of the members of the mediation team, the manipulation and threats of the international partners in the final days of the Abuja process undermined the AU's authority in the eyes of the parties, compromised Minawi and created general suspicion of the DPA in Darfur.⁴⁰ In addition to these problems, a peace agreement that did not include Abdel Wahid, whose faction represented the largest ethnic group in Darfur and the majority of the IDPs, was never likely to achieve its goals. At the end of the Abuja showdown, Abdelbagi Jibril, Executive Director of the Darfur Relief and Documentation Centre, argued that more time should have been taken to achieve an inclusive deal:

Signing a document for just the sake of signing is not helpful at all because at the end of the day, our objective is to have some kind of sustainable peace in Darfur and that cannot be really reached unless all the parties, all the parties, I mean all of them, come to terms with the kind of agreement that would be helpful.⁴¹

As far as Abdel Wahid and JEM were concerned, the AU's insistence on the 30 April deadline and the take-it-or-leave-it status of the DPA were as much the cause of their rejecting the document as was their unhappiness with its content.⁴² According to Tadjadine Bechir Niame, one of JEM's delegates at the talks, the essence of the problem was that the Agreement "does not address the root causes of the conflict and was not the result of a negotiation between the parties"; on receiving the DPA, he notes, JEM and the SLM proposed amendments to tackle the causes, but "the AU insisted that this is a take it or leave it document. They said they are not going to add even a comma".⁴³ Abaker Mohamed Abuelbasha, one of Abdel Wahid's negotiators, puts the case as follows:

Above all the [rebel] Movements have been given an ultimatum of five days to sign the document or leave it and this is clearly against the prevail[ing] understanding of negotiation norms world-wide which allow the parties to negotiate every issue and reach a compromise position, where everybody is a winner.⁴⁴

This comment sums up the procedural and commensurate political weakness of the DPA, which was a product of externally imposed deadlines, international pressure and the mediators' drafting efforts rather than a product of negotiated compromises and agreements reached by the parties themselves. Yet the comment is also disingenuous in that it ignores the context in which all of

³⁹ See "Peace Implementation Panel Condemns Ceasefire Violations in Darfur", *Sudan Tribune*, 6 August 2006; and "Secretary-General Voices Concern about Worsening Situation in Sudan", UN News Service, 11 August 2006.

⁴⁰ Author's interview with Dawit Toga, Political Analyst in the Conflict Management Division of the African Union, 30 July 2006. See also Watts Nyirigwa, "Darfur Peace: Does It Meet Legitimate Aspiration of the People?", *Sudan Tribune*, 12 June 2006.

⁴¹ Quoted in "Civil Rights Activist Dubious of Darfur Deal", VOANews.com, 5 May 2006, retrieved from www.voanews.com on 2 August 2006.

⁴² See "Darfur SLA/JEM Joint Press Statement".

⁴³ "A Rebel Walks Out for Peace: The *Satya* Interview with Tadjadine Bechir Niame", *Satya*, June/July 2006, retrieved from www.satyamag.com/jun06/niame.html on 11 August 2006.

⁴⁴ Abuelbasha, "On the Failure of Darfur Peace Talks".

this occurred. As discussed in the following section, the parties were not only unable to forge collectively acceptable compromise positions but scarcely made any attempt to engage in negotiations.

The posture of the parties

Prior to the end of April the parties in Abuja paid no attention to the deadlines emanating from the AU and its partners. For weeks on end they attended meetings without entering into negotiations. They made no attempt to accommodate each other's concerns and showed no interest in trying to find common ground. None of them was willing to make concessions to its opponents. There was no bargaining, let alone collaborative problem-solving. Instead, the parties merely reiterated their demands *ad nauseum*, rejected the claims of their adversaries, traded accusations, recriminations and insults, indulged in grandstanding for the benefit of the international observers, and endeavoured to win support for their positions from the mediators.⁴⁵

In January 2006 Salim told the UN Security Council that the negotiations had thus far been wracked by frustratingly slow progress, deep distrust and an unacceptable level of inflexibility.⁴⁶ In March the head of the AU mediation team, Sam Ibok, captured the key features of the conflict with the following lament:

While we have been attempting to negotiate a peace agreement, the Parties have continued to fight it out on the ground in Darfur [and] have violated the 2004 Ceasefire Agreement repeatedly and with impunity. ...Our experience over the past sixteen months has led us to conclude that there is neither good faith nor commitment on the part of any of the Parties.⁴⁷

In the second week of April President Obasanjo and President Sassou-Nguesso failed to budge the parties in high-level talks and the latter urged them to move away from their "fixed and maximalist positions".⁴⁸ Shortly thereafter the Government and rebels began talking directly to each other for the first time since January, having spent the previous months meeting separately with the mediators.⁴⁹ In light of the direct talks, Salim told the UN Security Council that the conflict "seems at last to be ripe for resolution" although "further frustrating hesitation" was expected from the parties.⁵⁰ Little progress ensued. On 15 April the rebels denounced the Government's "rigid political position that does not allow for any compromise",⁵¹ and on 23 April Minawi threatened to suspend negotiations if the Government did not abandon its hard-line

⁴⁵ These problems were greatest in the Power-Sharing Commission and the Security Arrangements Commission; in the Wealth-Sharing Commission, the parties' negotiators were able to reach a number of agreements. See "Briefing by Dr. Salim Ahmed Salim, AU Special Envoy and Chief Mediator for the Darfur Conflict, to the U.N. Security Council on 13 January 2006", African Union.

⁴⁶ "Briefing by Dr. Salim Ahmed Salim", pp. 3 and 5.

⁴⁷ "African Union Presents Ceasefire Proposal to Sudan Government and Darfur Movements: AU Tells the Sudanese Parties in Abuja – Time is Up", press statement, African Union, Abuja, 12 March 2006.

⁴⁸ "AU's Nguesso Urges Sudanese Parties to Conclude Darfur Peace Deal", *Sudan Tribune*, 10 April 2006.

⁴⁹ "Sudanese Parties Resume Direct Negotiations over Darfur Conflict", *Sudan Tribune*, 11 April 2006.

⁵⁰ "AU Warns Aid Needed for Darfur Peace Pact to Hold", Reuters, 18 April 2006, retrieved from www.alertnet.org on 21 April 2006; and "UN Becoming Anxious Over Darfur", Mail&Guardian Online, 20 April 2006, retrieved from www.mg.co.za on 21 April 2006.

⁵¹ "SLM/JEM Say Sudan's Taha Adopts a Rigid Position in Darfur Peace Talks", *Sudan Tribune*, 15 April 2006.

stance.⁵² On 24 April, the day before the DPA was tabled, Ibok again expressed doubts about the parties' interest in peace;⁵³ nor was he optimistic a fortnight later when interviewed the day before the DPA was signed by the Government and Minawi.⁵⁴

William Zartman's concept of 'ripe for resolution', invoked by Salim, provides a useful analytical lens for understanding these dynamics.⁵⁵ Zartman's premise is that conflicts are resolvable at certain moments but not others. Ripe moments arise when the disputant parties believe both that there is a mutually hurting stalemate, being a situation in which victory is out of reach and the deadlock is painful to all sides, and that negotiations have the potential to resolve the conflict. These are subjective considerations, reflecting the parties' assessment of objective conditions, the balance of power and the likely trajectory of the struggle. It is therefore quite possible that different conclusions are reached by independent observers and the parties' leaders, and also by different factions within a party.

Zartman notes that the identification of a ripe moment in a given conflict requires research and intelligence to identify the objective and subjective elements.⁵⁶ While the conflict is still underway, however, the subjective component is elusive. The parties are likely to downplay the extent to which they are hurting for fear of exposing their vulnerabilities and appearing weak; they may also be inclined to play up their professed commitment to negotiations lest they be perceived as opposed to peace. Because the stakes are so high, the protagonists' strategic calculations are intensely private affairs. In Abuja the parties' delegates frequently took the mediators and foreign diplomats into their confidence and shared 'sensitive' information, but this was invariably a form of public relations and manipulation. Throughout the process the mediators struggled to discern the parties' real calculations, uncertain how much of their intransigence was due to an unwillingness to negotiate and how much was due to an inability to negotiate.

There appeared to be four major reasons for the non-negotiating posture of the parties. First, as in all deadly conflicts, the parties viewed each other with hatred, suspicion and contempt. These psycho-political dynamics are an intrinsic feature of deep-rooted violent conflict. They are a powerful barrier to dialogue and negotiations, which require at least some trust between the adversaries and a willingness to co-operate with the enemy. One of the primary functions of the mediator is thus to build the parties' confidence in each other and in the process of negotiations.⁵⁷ This did not happen in Abuja, where there was no thawing of suspicion and enmity. The mediators were later to identify the mistrust between the parties as one of the foremost constraints on the talks.⁵⁸

⁵² "SLM's Menawi Threatens to Suspend Darfur Peace Talks", *Sudan Tribune*, 24 April 2006.

⁵³ "AU to End Darfur Peace Talks If No Agreement by End of April", *Sudan Tribune*, 24 April 2006.

⁵⁴ "International Envoys Push Rebels to Back Darfur Peace Deal", AFP news report, 4 May 2006, retrieved from www.sudan.net on 10 July 2006.

⁵⁵ See I. William Zartman, "The Timing of Peace Initiatives: Hurting Stalemates and Ripe Moments", *The Global Review of Ethnopolitics*, vol. 1, no. 1, 2001, pp. 8-18; and I. William Zartman, *Ripe for Resolution: Conflict and Intervention in Africa*. New York: Oxford University Press, 1989.

⁵⁶ Zartman, "The Timing of Peace Initiatives", pp. 9-10.

⁵⁷ See Nathan, "When Push Comes to Shove".

⁵⁸ "AU Reacts to ICG Report".

More specifically, the Government regarded the rebels as unworthy military, political and negotiating opponents: it believed that they did not pose a serious military threat, were not representative of the people of Darfur, were too divided to ever achieve a unified negotiating stance and did not have legitimate grievances. Dismissing the SLM and JEM as ‘rebels without a cause’, the Government saw no need to make substantial concessions to them. It was also concerned that meeting the rebels’ political and economic demands might intensify similar demands from marginalised communities elsewhere in Sudan. Most galling to the Government negotiators was their conviction that the Abuja talks did not reflect, and were not a consequence of, the balance of power; the talks were underway only because international intervention had prevented Khartoum from redeploying its military forces from southern Sudan to crush the Darfurian insurgency when it broke out in 2003.

The rebels regarded the Government as an evil regime that reneged on peace agreements. It had come to power through a coup; it had a notorious human rights record; it had repeatedly undertaken to disarm the Janjaweed militia and failed to honour that commitment; and it was not implementing faithfully the Comprehensive Peace Agreement concluded in 2005, which had ended the civil war between the Government and the Sudan People’s Liberation Army/Movement in southern Sudan.⁵⁹ In addition, the Government had enormous wealth and power, the rebels had neither wealth nor power, and the extreme marginalisation of Darfur was one of the fundamental causes of the rebellion. Therefore, according to the rebels, the Government could, and should, make extensive concessions whereas the rebel movements had nothing to give up.

Second, the divisions among the rebels contributed greatly to their non-negotiating posture. There was significant disagreement and mistrust between the SLM and JEM, the former being wary of the latter’s Islamist agenda; the SLM was split into two factions that were attacking each other in the battlefields of Darfur while the talks were underway; the two factions were themselves loose and tenuous alliances of local leaders; and there were constant quarrels within the Abdel Wahid faction, some of whose members attempted to oust him as their leader during the Abuja process.⁶⁰ Salim identified the splits and fragmentation of the movements as another of the major constraints on the talks.⁶¹

The divisions inhibited progress in several ways. They were an unwelcome distraction as the rebels focused on internal disputes and intrigue at the expense of the official talks. They also heightened the climate of suspicion, making the rebels afraid that the Government or the mediators might use divide-and-rule tactics against them. Most importantly, the divisions made it virtually impossible for the movements to adopt a flexible negotiating stance. In light of the difficulty the rebels experienced in formulating common positions and their fear of divide-and-rule, the most viable and prudent course of action was to hold fast to maximalist bottom lines. In the middle of February the Abdel Wahid faction refused to meet in the same room as the Minawi faction and the mediators were thereafter unable to convene plenary negotiating sessions. While

⁵⁹ On the Government’s poor performance in relation to the Comprehensive Peace Agreement, see International Crisis Group, “Sudan’s Comprehensive Peace Agreement: The Long Road Ahead”, *Africa Report*, no. 106, 31 March 2006.

⁶⁰ For accounts of the rebel divisions and their negative impact on the negotiations, see “Briefing by Dr. Salim Ahmed Salim”, pp. 2-3; and International Crisis Group, “Unifying Darfur’s Rebels”.

⁶¹ “AU’s Salim Reveals Abuja Handicaps”.

this condition prevailed there was little hope of building trust and common ground with the Government.

Third, the balance of power was such that it reinforced intransigence on all sides. The rebel movements had little military leverage; many of their representatives at the talks were inexperienced and unconfident negotiators; they were confronted in the field and in Abuja by a strong and sophisticated adversary; and they were unfamiliar with the concepts and practicalities of ceasefire arrangements. They were consequently frightened of being outwitted in the negotiations and especially scared of agreeing to anything that might weaken them militarily or expose them to Government attack. Intransigence can be the natural refuge of weak parties in negotiations. Perversely, as in this case, it is also sometimes a negotiating option chosen by strong parties that are not threatened and see no necessity to make concessions.

Fourth, most of the parties in Abuja appeared to view the battlefield as the strategic arena of conflict and the negotiations as simply a tactical arena. Given the international outcry over the humanitarian crisis in Darfur, the parties had to be seen to be engaged in peace talks but this was not the principal means of defending and advancing their interests. As Zartman points out, participation in negotiations does not in itself indicate the existence of a ripe moment; it may be merely a tactical interlude or a sop to external pressure, without any serious intent by the parties to look for a joint solution.⁶²

Minawi seemed to believe that his interests were best served through a war of manoeuvre against the militarily weaker grouping of Abdel Wahid. In the midst of the negotiations his forces in Darfur seized strategic locations from Abdel Wahid with little public protest other than from Abdel Wahid. The Government, on the other hand, seemed to believe that its interests would be served through a war of attrition. It was not overly troubled by the weak international pressure on it; it did not have a strong sense of responsibility to protect civilians in Darfur; it was not under any great military threat from the rebels; it was not incurring onerous military costs since it relied on the Janjaweed as a proxy force; and the rebels were busy fighting each other. For its part, JEM had a national political agenda that would not be met by a peace agreement for Darfur and, although the organisation lacked a sizable fighting force, its military activities in western (and eastern) Sudan helped to maintain its profile and status as a liberation movement.

Abdel Wahid, whose community and forces were being hammered by the Janjaweed, the Government and Minawi, was the only leader who keenly wanted a settlement. He was therefore well-placed to seize the initiative in the talks and occupy the high ground internationally as a leader desirous of peace. He did not exploit this potential and ended up being seen by the AU and its partners as the main spoiler. In his discussions with the mediators he was erratic and indecisive, projecting confusion and backtracking on promises,⁶³ in January and February 2006 he entered into secret talks with the Government and then pulled out just as an agreement looked imminent.⁶⁴ His formal demands, on the other hand, remained the same from the start to the end of the Abuja process. This was not a tenable negotiating posture; the demands reflected legitimate grievances but the rigidity amounted to a 'win-lose' approach in relation to the Government and

⁶² Zartman, "The Timing of Peace Initiatives", pg. 9.

⁶³ See "AU's Salim Reveals Abuja Handicaps".

⁶⁴ International Crisis Group, "Darfur's Fragile Peace Agreement", pg. 2.

had no prospect of success. For all his weaknesses, though, Abdel Wahid was not an opportunist. He sought an agreement that satisfied the needs of his constituency and he was convinced that the DPA did not do this.⁶⁵

As a result of the four sets of factors outlined above, the parties were not ready for a negotiated settlement. None of them was willing to meet the essential requirements for successful negotiations in a civil war, namely co-operation with the enemy, reciprocal concessions, and mutual accommodation of each other's needs and interests.

The pressure on the mediators

For all the fuss made by the international partners about the violence in Darfur, they did not provide guaranteed funding for the peace talks. Instead, a small number of donors provided grants retrospectively to cover expenses already incurred and warned repeatedly that funding could dry up in the absence of a quick accord. Aside from the anxiety this caused the mediators, the reliance on uncertain deficit funding was not sustainable. In January 2006 Salim complained to the UN Security Council that the funding situation was extremely precarious;⁶⁶ when Djinnit told the mediators to wrap up by the end of February, he cited the lack of funds as the main reason; and when the Peace and Security Council announced in March that the DPA had to be concluded by the end of April, the mediators were informed that the talks would not be funded thereafter.⁶⁷

Whereas the deadline diplomacy was ignored by the parties until the climax of the Abuja process in April, it was taken very seriously by the mediators who were obliged to adhere to the targets set by their donors and political masters. Reinforced by the acute funding pressure, the deadline diplomacy had several negative consequences for the mediation.

First, the ever looming deadlines made it pointless to develop a comprehensive mediation strategy and plan. If the talks were always due to shut down in a matter of weeks, then there was no need to prepare a plan of action for the following six months. The deadlines inhibited a programmatic effort to build momentum gradually over time and led instead to an ad hoc approach that proceeded in fits and starts. The deadline diplomacy *was* the strategy and the plan, and it was way too simplistic, vacuous and rigid for this purpose. Given the nature of the conflict in Darfur, what was required was a multi-faceted plan with objectives, strategies, taskings and resource allocations not only in relation to the parties in Abuja but also in relation to Sudan's neighbouring states, the people of Darfur, AU and UN headquarters, key AU member states, and the power blocs that comprise the Sudanese state.

Second, the deadlines and the imperative of producing the DPA by a certain date severely reduced the mediators' control of the process and constrained their flexibility, options and ability

⁶⁵ In July 2006 a group of Abdel Wahid's commanders announced that they had overthrown him because of his failure to maintain the unity of the SLM and consult its leadership; the commanders expressed opposition to the DPA and support for a negotiated settlement. See "Newly Appointed Darfur Rebel Leader Ready for Negotiated Solution", *Sudan Tribune*, 19 August 2006.

⁶⁶ "Briefing by Dr. Salim Ahmed Salim", pg. 9.

⁶⁷ The shortage of funds also led periodically to the non-payment of per diems to the rebel delegates, generating much tension with the mediators, whom the rebels expected to solve the problem.

to make strategic decisions on the basis of their best judgement. For example, in late February and early March, confronted by the deadlock in Abuja and the fierce fighting in Darfur, the mediation team debated at length whether it was more likely to make progress by putting forward a comprehensive peace agreement aimed at addressing the root causes of the conflict or by tabling an enhanced humanitarian ceasefire agreement aimed at reducing the level of violence and improving the climate for negotiations. The debate was rendered moot by the Peace and Security Council's decree that the comprehensive agreement had to be concluded by the end of April.

By way of further example, the mediators believed that the rebels' intransigence was due partly to a lack of expertise and confidence in negotiations and in the modalities of a permanent ceasefire and other issues. The mediators consequently provided training to the rebels, at their request, but were unable to do this properly; in light of the deadlines, the requisite training was considered a waste of time. Nor were the mediators able to explore procedural alternatives to the ineffective plenary sessions with large delegations in Abuja, such as relocating to Darfur and making the dialogue more inclusive or moving to the AU's headquarters in Addis Ababa and limiting the talks to party leaders. In short, the external pressure fixed in place a process and trajectory in which neither the mediators nor the parties had any confidence, but from which little deviation was possible.

Third, the deadline diplomacy contributed indirectly to the absence of negotiations between the parties. In order to comply with the calls to speed up and meet unrealistic deadlines, the mediation team prepared position papers that moved far ahead of the parties as it attempted to bridge the yawning gaps between them. This reinforced the parties' misconception that the mediators were arbitrators rather than facilitators of dialogue and negotiations. In response to the mediators' papers, the parties applauded what they liked, rejected the rest and devoted much time and energy to lobbying the mediators. To the great frustration of the mediation team, the parties' most strenuous negotiating efforts were directed at the mediators and not at each other.

Fourth, the tight deadlines made it impossible for the mediators to communicate in a meaningful way with the people of Darfur and with important groups that were not represented at the talks. Similarly, the rebel negotiators were unable to brief and consult properly their constituencies. Darfurian civil society had no opportunity to shape or even view the content of the draft DPA and could not conceivably have acquired a sense of ownership of it. As Pronk observed, the perception of many Darfurians was that the Agreement had been forced on them.⁶⁸ So great was the geographical and political distance between Abuja and Darfur that when violent protests against the DPA broke out after the signing ceremony, the mediators were convinced that much of the opposition was based on an incomplete and inaccurate reading of the document.

The AU believed that the envisaged Darfur-Darfur Dialogue and Consultation (DDDC) would ensure popular ownership of the Agreement and secure the support of stakeholders who were not present at the negotiations.⁶⁹ This perspective was badly flawed. The DDDC was only due to start

⁶⁸ Pronk, "Darfur Agreement is Severely Paralyzed".

⁶⁹ See "The Current Chairman of the African Union Holds High Level Consultations with the Sudanese Parties and Other Stakeholders in Abuja", press release no. 44, 7th Round of the Inter-Sudanese Peace Talks on the Conflict in

after the Agreement's entry into force, at which point the document would have been set in stone. Groups that felt aggrieved by their exclusion from Abuja were unlikely to have been assuaged by consultations at that stage. Indeed, the Agreement states explicitly that the DDDC cannot "reopen [the DPA] for further negotiation".⁷⁰ This limitation reduces considerably the scope, utility and credibility of the DDDC process. It creates the risk that the process will fail to meet popular expectations, generating resentment and conflict. At the time of writing, the DDDC was not yet properly underway.

Fifth, the haste induced by the deadline diplomacy precluded effective mediation and the parties' ownership of the DPA. Barring a decisive military victory, the only sustainable solution to a civil war is a settlement shaped and embraced by the protagonists. A settlement cannot be forced down their throats since their consent and co-operation are required to implement the agreement and adhere to its terms thereafter. Consequently, the mediator's job is to help the parties overcome their enmity and mistrust, build their confidence in negotiations, and facilitate dialogue, bargaining and collaborative problem-solving.⁷¹ This always requires protracted efforts and immense patience. It cannot be done in fits and starts between externally imposed short-term deadlines.

In lieu of mediation, the deadline diplomacy led to the production by the mediators of a peace agreement covering cardinal issues on which the parties disagreed bitterly; to an unreasonably brief period for the parties' consideration and approval of the document; and to a burst of intense pressure on the parties in the dying moments of the process. Each of these elements was antithetical to the parties' ownership of the Agreement.

Politically and psychologically, the question of ownership is most sensitive and important in relation to the compromises contained in a peace settlement. Compromises entail concessions to a hated adversary and give rise to perceptions of weakness and defeat. They have to be sold to militants in each party and make negotiators and leaders vulnerable to accusations of betraying the struggle. Responding to criticism from the rebels and analysts that the DPA favoured the Government, the AU was at pains to insist that the compromises in the text were unavoidable because of the balance of power:

Throughout the entire process of negotiations at Abuja, the African Union Mediation was constrained by several important factors. An elementary reality, that sometimes appears to be lost on some commentators, is that the Movements did not win a military victory and were therefore not in a position to impose their terms on the Government of Sudan. Any deal reached involved the SLM/A and JEM making compromises on dearly-held political objectives.⁷²

This argument reflects the broader truth that compromise is an intrinsic feature of negotiated settlements in civil wars, but it misses the equally fundamental point that the DPA and its

Darfur, African Union, Abuja, 9 April 2006; "AU Reacts to ICG Report"; and Chapter Four of the Darfur Peace Agreement.

⁷⁰ Paragraph 461(a) of the Darfur Peace Agreement.

⁷¹ See Nathan, "When Push Comes to Shove".

⁷² "AU Reacts to ICG Report".

compromises were crafted by the mediators and not the parties, enabling the mediators, but not the parties, to claim ownership of the Agreement. Salim was thus able to refer to provisions in the DPA as the “mediators’ proposals”, “our proposals” and the “Mediation’s compromise”.⁷³ Abdel Wahid’s faction, on the other hand, was able to insist that “the legitimate question is on what basis the Movement have to sign an agreement, which it did not participate in its discussion?”.⁷⁴ According to a JEM official, “we have rejected the proposed peace accord because we do not think that the document is a product of a negotiated settlement. In fact, we think that this document is a product of intimidation, bullying and diplomatic terrorism”.⁷⁵

On 7 May 2006 six members of the mediation team, including its head, Sam Ibok, issued a 3,000 word “Open Letter to Those Members of the Movements Who Are Still Reluctant To Sign”. They sought to ease the rebels’ objections and fears by explaining aspects of the DPA and suggested that “many of the suspicions about this Agreement are based on misunderstanding and the fact that many of you have not had time to study the text in detail, and understand what it provides”.⁷⁶ This statement, made after the DPA had been signed by the Government and Minawi, is a telling indictment of the inappropriate deadlines and haste. The AU concluded the formal talks and closed the Agreement to negotiation and amendment before many of the rebel negotiators were able to comprehend the document, never mind embrace it.

Conclusion

The deadline diplomacy for Darfur, which aimed to produce a quick accord, was motivated chiefly by the appalling level of death and destruction in western Sudan. It was also driven by a range of geo-political factors. The other major strategies for tackling the crisis – tough sanctions and the deployment of a UN force with a robust mandate – were not attractive or even feasible in the short- to medium-term. These strategies are always difficult to implement, their impact is not predictable, their efficacy is uncertain, they are no substitute for a genuine peace agreement and, in the case of Darfur, they were opposed in the UN Security Council by Russia and China. In addition to the humanitarian benefits, a quick accord would end the political struggles around these issues. It would also meet the US desire for reduced tension with Khartoum, regarded by Washington as an ally in the ‘war on terror’,⁷⁷ and enable the US to concentrate its attention on the Comprehensive Peace Agreement of 2005, which had led to a new Interim National Constitution for Sudan and encompassed an arena of conflict deemed more important than Darfur.

Underlying the deadline diplomacy, moreover, was a growing frustration among the funders of the negotiations, who were covering not only the expenses of the mediation but also the accommodation and subsistence costs of the sizable rebel delegations in Abuja. These costs

⁷³ “Statement by Dr Salim Ahmed Salim”.

⁷⁴ Abuelbasha, “On the Failure of Darfur Peace Talks”, pg. 5.

⁷⁵ Interview with Abdullahi Eltom in “Darfur: Inside the Crisis”, 15 May 2006, retrieved from the website of Democracy Now!, www.democracynow.org, on 5 September 2006.

⁷⁶ The letter was published in the *Sudan Tribune* on 9 May 2006 under the heading “AU Mediators Address Open Letter to Reluctant Darfur Rebels”.

⁷⁷ See, for example, Ken Silverstein, “Official Pariah Sudan Valuable to America’s War on Terrorism”, *Los Angeles Times*, 29 April 2005, retrieved from the website of the Global Policy Forum, www.globalpolicy.org on 13 September 2006.

might have been bearable had the parties been making steady progress, but no material advancement had been recorded between the first and the seventh rounds of talks. The donor governments had nothing positive to report to their parliaments and the future looked bleak. They were not willing to continue funding unproductive talks whose successful conclusion seemed improbable. On the other hand, jettisoning the talks without a peace accord would have been hugely unpopular with the Western constituencies agitating for strong action on Darfur. From the donors' perspective, the talks had to be brought to a close with an agreement on the table and, if at all possible, with the parties' signatures on that agreement.

Notwithstanding these various rational motivations, the deadline diplomacy reflected a deeply flawed understanding of peacemaking in civil wars. There are numerous failed mediation initiatives in Africa that similarly, and as mistakenly, sought a quick settlement and relied on strong-arm tactics, underestimating the complexity of the conflict and neglecting the imperative of ownership.⁷⁸ A comparative study of some of these cases, published in 2004, led to the following general observation that describes almost perfectly what happened in Abuja in 2006:

Mediators deployed by states and multinational organisations frequently focus more on the solutions to a conflict than on the process of peacemaking. They formulate solutions, endeavour to win the parties' consent thereto, and press for rapid results through a combination of persuasion and leverage. They might adopt this approach because they regard the solution as fairly obvious and consider the demands of one or more of the parties to be completely unreasonable. They might also be concerned about the high level of fatalities and the financial cost of a drawn-out engagement. Whatever their motivation, however, a mediator's confidence that he or she can quickly bring the parties to their senses is both naïve and arrogant.⁷⁹

In the case of Darfur, the deadline diplomacy inhibited effective mediation, resulted in a peace agreement that did not achieve peace, and sowed divisions that exacerbated the conflict. As with all civil wars, the humanitarian need for a quick accord was indisputable. But there is never a quick fix. These wars are social phenomena whose causes, dynamics and contested issues are multiple, complex and intractable, and the difficulty of resolution is heightened immeasurably by the protagonists' mutual hatred and suspicion. In these circumstances, short-cuts and quick fixes are invariably cul-de-sacs.

For a combination of political, psychological and pragmatic reasons, a peace agreement has to be owned by the disputant parties. They have to sell the agreement to their constituents; they have to come to terms, in particular, with its compromises; they have to implement it; and they have to adhere to its provisions in the long run. The Abuja experience demonstrates that there is no benefit to be gained from pressurising the parties to sign an accord to which they are not committed; and that the process by which an accord is prepared and concluded determines its acceptability and legitimacy and is therefore no less critical than the content.

⁷⁸ Nathan, "When Push Comes to Shove".

⁷⁹ Laurie Nathan, "Mediation and the African Union's Panel of the Wise", in Shannon Field (ed.), *Peace in Africa: Towards a Collaborative Security Regime*. Johannesburg, Institute for Global Dialogue, 2004, pg. 71.

Finally, it is necessary to comment briefly on certain inferences that might be implied by the preceding discussion but would not in fact be justified. The claim that the deadline diplomacy had many negative consequences does not imply that a more patient and supportive approach by international actors would definitely have yielded a positive outcome. Given the parties' intransigence, the talks might simply have dragged on interminably and inconclusively. For this reason too, it cannot be claimed that a different mediation strategy or style would necessarily have borne fruit. Mediators can stimulate and exploit opportunities for progress, but there is little they can do if the disputant parties refuse to engage in negotiations.

The suggestion that the Sudanese parties were not ready for a negotiated settlement does not imply that international actors should have stood by idly in the face of the mass killing and displacement of people in Darfur. If a conflict is not ripe for resolution, then the challenge is precisely to determine how best to alter the strategic calculations of the belligerents and generate a ripe moment through a mixture of incentives and pressure.⁸⁰ Although the impact of punitive action in high intensity conflict is unpredictable, it seems clear that the approach adopted in relation to Darfur, where the international community issued threats and then failed consistently to act on them, emboldened the belligerents.⁸¹

There is sufficient evidence to argue that the DPA heightened the conflict and made its resolution more difficult. Yet it is overstating the case to maintain that "much of the violence [in Darfur] is a direct result of the shortcomings in the Abuja agreement, particularly the failure to provide meaningful international guarantees and guarantors".⁸² The international community's failure to provide adequate support to the AU peacekeeping force in Darfur, which cried in vain for resources to oversee a tenuous ceasefire and protect civilians, has been especially shameful but the responsibility for the violence lies squarely with the perpetrators of the violence. The heaviest burden falls on Khartoum, whose marginalisation of Darfur provoked the rebellion and whose wanton destruction of communities thereafter invoked the charge of genocide.

Similarly, the deadline diplomacy was counter-productive but the failure to produce a viable peace agreement in Abuja is attributable to the parties. In a major address on 30 April, Salim stated that the mediators had agonised over every detail in the DPA before presenting it to the delegations, had considered the pros and cons of every article and paragraph, and had always been guided by concern for the people of Darfur and responsibility for ending their suffering.⁸³ None of the parties could have made any of these claims. This was greatly to their discredit and to the detriment of the Agreement.

⁸⁰ Zartman, "The Timing of Peace Initiatives", pp. 14-15.

⁸¹ On the international community's failure to respond adequately to the Darfur killings and humanitarian catastrophe see, for example, Gérard Prunier, *Darfur: The Ambiguous Genocide*. London: Hurst & Co., 2005. See also www.sudanreeves.org, the website of Eric Reeves, who writes prolifically on this topic.

⁸² Eric Reeves, "Darfur's Downward Spiral", 11 August 2006, retrieved from *The Guardian* website, <http://commentisfree.guardian.co.uk>, on 31 August 2006.

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Mediation Arguments no. 3

THE USEFULNESS OF NATIONAL MEDIATION IN INTRA-STATE CONFLICT IN AFRICA

Andries Odendaal

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The Usefulness of National Mediation in Intra-State Conflict in Africa

Andries Odendaal*

In his 2012 report on mediation, the UN Secretary-General notes a growing trend to recognize the ability of national mediators to lead mediation in intra-state conflict. This article explores the feasibility of national mediation in Africa. It analyses the role of national mediation in South Africa (1985–1996) and Lesotho (2009–2012) and, taking Ghana as the primary example, the role of national peace councils, which have an institutionalized mandate to mediate in internal conflict. It discusses the complementarity of national and international roles in national mediation, the issue of leverage, the conditions for national mediation, the composition of mediation teams and their mediation capacity, and the benefits of national mediation. The article offers qualified support for the usefulness of national mediation since it can produce benefits such as enhanced self-reliance and social cohesion, has substantial ability to prevent conflict and can help to implement agreements. However, the specific conditions necessary for national mediation to be viable mean that success is rare.

Introduction

The UN Secretary-General's 2012 report on the role of mediation in preventing and resolving conflict highlights the importance of local or national mediation. According to the Secretary-General, there is 'growing recognition that mediation is not the exclusive purview of external mediation actors. Local mediators who come from the conflict country can usefully lead local mediation efforts or complement regional or international initiatives' (UNSG 2012, 6).

Few would disagree that in Africa local mediation efforts have complemented regional and international mediation processes in significant ways. In the Mozambican civil war, for example, local church leaders played a key role from the early 1980s to 1992 in initiating and supporting the peace process. The formal mediation was done by San Egidio, an Italian Catholic lay community, but the sustained involvement of the churches throughout the process and beyond was one of the reasons for its success (Paffenholz 2011, 122–4). Further examples where civil society actors provided important support to international mediators are Mali, 1990–1997 (Storholdt 2001), Sierra Leone, 1996–1999 (Turay 2000) and Kenya, 2008 (Wachira 2010).

It is, however, less evident that local mediators 'can usefully lead local mediation efforts'. There are not many cases where national actors have been the principal mediators in a major intra-state conflict in Africa. The dominant mediation model is to rely on external mediators mandated by a regional or international body such as SADC (Southern African Development Community), IGAD (Intergovernmental Authority on Development), ECOWAS (Economic Community of West African States), the AU or the UN. Nevertheless, national mediation promises benefits that, if realised, should ensure that it is an option worth considering and supporting: reliance on local knowledge and culture, enhancement of a

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country's self-reliance and social cohesion, a strong possibility of preventing conflict, and support for the implementation of agreements.

In this article I analyze actual experience with national mediation on the African continent in order to inform the debate on its feasibility. Even though the sample of cases is small, it supports the view that national mediation is a useful option under specific conditions and brings significant benefits when it succeeds. National mediation is, however, a complex undertaking. It is contingent on the political will of the protagonists and their desire for national self-reliance and on the disparate nature of mediation teams and processes. And it can be undermined by a lack of or insufficient reliance on mediation expertise and by failure to gain and sustain the confidence of all conflict parties in the impartiality and clout of the national mediators. Successful national mediation is therefore a rare achievement.

I first present two case studies: the South African transition to democracy (1985–1996) and the mediation by church leaders of Lesotho's electoral crisis (2009–2012). Next, taking Ghana as the primary example, I consider the growing trend in Africa to establish national peace councils with a standing mandate to mediate in intra-state conflict. I then analyze the complementarity of national and international roles in national mediation, the issue of leverage, the conditions for viable national mediation, the composition of mediation teams and their mediation capacity, and the benefits of national mediation.

Case study of South Africa (1985–1996)

In the 1980s the conflict in South Africa that resulted from over 300 years of colonialism and 40 years of apartheid approached boiling point. The country was steadily heading for civil war. Between 1985 and 1990 more than 6,000 people died because of political violence (Gastrow 1995). This was one of the most internationalized conflicts in the world. International pressure was considerable. The country featured constantly on the agendas of the OAU and the UN Security Council and General Assembly. Apartheid was declared a crime against humanity by the UN General Assembly in 1976. A voluntary arms embargo imposed on South Africa by the UN Security Council in 1963 was made mandatory in 1977. OPEC (Organization of the Petroleum Exporting Countries) imposed an oil embargo in 1973 and multi-lateral trade sanctions increased in volume especially after 1983. In 1986 the United States Congress enacted federal legislation on disinvestment in South Africa. In addition the country was subjected to extensive sport and cultural boycotts. Considering the intense international pressure, it was remarkable that the political solution to the conflict was almost entirely internally mediated.

National mediation in South Africa took three forms: confidence-building encounters, the National Peace Accord and agreements with the Afrikaner right-wing and the IFP (Inkatha Freedom Party), and the national negotiation process.

Building confidence

Between 1985 and 1990 initiatives were taken to engage the two main protagonists – the ANC (African National Congress), the dominant liberation movement, and the NP (National Party) government – in unofficial talks and confidence-building encounters. Most, though not all, of these engagements relied on third-party actors. They developed from three different initiatives (Du Toit 2001, 53–5). The first came from Nelson Mandela, then still in prison, whose letters to the government led to his 44 secret meetings

during the period 1985 to 1990 with Kobie Coetzee, the minister of justice. The second took the form of initially secret talks between the ANC-in-exile and the government, facilitated by Michael Young, a British citizen who was the public affairs director for Consolidated Gold Fields, an international mining company with large investments in South Africa. The government's participation in these talks was administered by the National Intelligence Service and attended by prominent academics associated with the ruling party. Eight meetings were held between October 1987 and 1990 (Esterhuysen 2012). Third, there were approximately 75 encounters between white opinion-makers and civil society leaders and the ANC-in-exile, arranged by civil society organizations, including IDASA (Institute for Democracy in South Africa), the Centre for Intergroup Studies, and the Mont Fleur scenario project (Du Toit 2001). These organizations also convened, at times in collaboration with international institutions, events to enhance understanding of and skill in mediation and negotiation.

The most important consequence of these initiatives was that the two sides came to realize that a negotiated settlement was achievable. Bouckaert (2000, 237) concludes that a remarkable level of mutual understanding and common purpose, albeit tenuous, was established through these encounters that stretched over more than five years.

Ending violence

The second form of national mediation consisted of agreements designed to end political violence, which in 1991 was threatening the prospect of constructive negotiations. Both the government and the ANC attempted to organize a national peace conference to address the issue of violence, each under its own auspices. When that failed, a coalition of religious and business leaders took the initiative and succeeded in mediating discussions that led to the signing of the National Peace Accord (Gastrow 1995), a code of conduct for political parties and the security forces during the period of negotiations. The Accord established the Goldstone Commission (named after its chairperson, Judge Richard Goldstone), whose independent investigations into the perpetration of political violence had a considerable impact. The Accord also established a system of inclusive regional and local peace committees, tasked to prevent violence and mediate in disputes that could disrupt the negotiations (Gastrow 1995; Collin Marks 2000; Odendaal 2012). The negotiation of the Accord was mediated by Archbishop Desmond Tutu on behalf of the churches and John Hall on behalf of the business community, with the CBM (Consultative Business Movement) in a supportive role.

The CBM was formed in 1989 by a group of 40 senior business leaders as a direct response to the challenge of achieving a peaceful transition from apartheid to democracy. It wanted to play a role in the transition, support key processes with finances and resources and act as a catalyst to enable constructive change. It therefore appointed staff who were experts in facilitation and mediation.

The National Peace Accord was drafted by five working groups, each co-chaired by a religious leader and a business leader. The peace committees, at the different levels, relied on civil society actors to mediate in local disputes that could disturb or disrupt the national process. Although these peace committees were not altogether successful in preventing political violence, they made a significant contribution to mediating local pacts and containing the rising tide of violence (Ball 1998; Odendaal 2012).

Civil society also helped to mediate the entry into the national negotiations of the IFP and a faction of the Afrikaner community led by General Constand Viljoen. Both organizations were threatening the peace process with ethnic-based violence.

The IFP's announcement that it would boycott the country's first democratic elections, scheduled for 27 April 1994, considerably heightened the tension between IFP and ANC supporters. The IFP was unhappy because it felt that its federalist ambitions and the statutory position of the Zulu king had not been sufficiently accommodated in the negotiations (Kotzé 1995) and that the party had been sidelined in the negotiation process. The tensions between the IFP (which was supported by elements in the government's security forces) and the ANC produced the most serious incidents of violence during the transition period (Sisk 1995; Yorke 1998, 116).

This stand-off led to the only international attempt at mediation, with Henry Kissinger, former Secretary of State of the US, and Lord Carrington, former British Foreign Minister, boarding planes to South Africa on 12 April 1994 to lead the mediation effort. The mediation was stillborn and Kissinger and Carrington left after only two days. With the ANC and NP on one side and the IFP on the other, the parties could not even agree on the terms of reference for the international mediation, particularly when the IFP insisted that the mediation must run its course before elections could take place, thereby effectively seeking to postpone the elections. However, a member of the mediation team, Kenyan Professor Washington Okumu, stayed behind and, because of a long-time friendship and shared religious convictions, was able to persuade the IFP leader, Mangosuthu Buthelezi, to reconsider his position. With help from the CBM, Okumu then mediated an 'agreement for reconciliation and peace' between the IFP, the ANC and the government. The agreement included the IFP's decision to participate in the elections, recognition of the Zulu kingdom and referral of all outstanding issues regarding the Zulu king to international mediation. Sisk (2009, 100) argues that this agreement was more face-saving than mediation, being intended to accommodate the IFP leader, who had taken the brinkmanship game too far. But face-saving is a key task of mediation, and in this case it had a huge impact on the success of the elections and the transition.

The agreement that all unresolved issues between the parties would be submitted to international mediation was, to the lasting exasperation of the IFP, never implemented. The IFP's wishes found very little support among other political parties and civil society: there was just no appetite for this option in South Africa (Kotzé 1995; Sisk 2009, 100). The two main drivers of the negotiation process, the ANC and the NP government, shared a strong commitment to an internal process. The government had, for many years, been at the receiving end of the international community's disapproval and sanctions. Its trust in the impartiality of the international community was weak. The ANC, whose ideological ally was the Soviet Union, was wary of a strong role for the US and Britain (Sisk 2009). In addition, the ANC had negative perceptions of the role of international mediation in the Lancaster House negotiations (1980) that had led to the independence of Zimbabwe and in the mediation of Namibian independence (1988–1990) (Esterhuyse 2012, 330). In both cases the ANC thought the international mediators had influenced the agreement to the detriment of the liberation movements.

The other ethnic-based threat of violence came from the white Afrikaner community. General Constand Viljoen, a retired Chief of the South African Defence Force, led a right-wing movement of resistance to the national talks because the option of an Afrikaner *volkstaat* (a separate state for Afrikaners) was not being considered. Some believed at the time that at least 50,000 well-trained and armed Afrikaner soldiers would heed his call to arms (Giliomee 2003, 646); and he did indeed seriously consider this course of action. A constellation of events and considerations prevented that scenario. His talks with the ANC, initiated and facilitated by an informal group headed by his twin brother, Professor Braam Viljoen, produced an agreement and led to his entry into the political process (Kotzé 1995). The agreement stipulated, among other things, that the ANC would allow the establishment of a *volkstaat* if the plan could

be proven to have sufficient support (which it never was). Braam Viljoen was at the time the coordinator of the Northern Transvaal Peace Committee. His relationship with his brother and his links to both the conservative farming community and progressive groups made his mediating role possible.

Negotiating the settlement

The third form of national mediation in South Africa was the official negotiation process that achieved a political settlement. There was no official mediator, but instead mechanisms were created that did what an official mediator would have done. Meetings were facilitated initially by three judges and at a later stage by members of the negotiation teams, who operated on a rotating basis. These individuals had to step out of their negotiation role in order to facilitate the meetings. The design and management of the negotiations, including processes to break deadlocks, was undertaken by joint planning committees. Members of these committees were representative of the parties, selected on the basis of their ability to plan the process soundly. They accepted the responsibility of being 'guardians' of the process (Eloff 1994).

The planning committees were assisted by the CBM, whose role during the negotiations came closest to the classic third-party mediation role. They served the negotiation process well. Officially they were appointed as the secretariat of the Convention for a Democratic South Africa (CODESA) – the first round of negotiations that stalled in 1992 – and as administrator of the Multi-Party Negotiation Forum, as the negotiations process came to be known, but their role extended well beyond bureaucratic matters. They had a substantial influence on the design of the process and managed to depoliticize many of the procedural issues (Eloff 1994, 2006; Sisk 2009, 99).

In summary, South Africa's negotiations succeeded primarily because of the strong resolve of the two main protagonists, the NP and the ANC, to find a negotiated solution. In addition, third-party actors, most of whom were South African, contributed substantially to the success of the process. While there was no formal mediator, the combined impact of the third-party interventions contributed to, supported and eased the difficult negotiations. South Africa's transition was indeed mediated not by a high-profile mediator sent from outside, but by the combined efforts of its own society.

Case study of Lesotho (2009–2012)

In Lesotho national mediation became an option in 2009 because of the failure of regional mediation and state institutions to deal with a crisis caused by contradictory interpretations of the electoral act. The crisis caused political instability following the elections of 2007.

The crisis was but the next phase of a struggle begun in 1998 to create an electoral system that would best suit Lesotho's conditions. The first-past-the-post system that the nation had inherited from Britain contributed to the catastrophic outcome of the 1998 election. Substantial sections of the business district of Maseru and two neighbouring towns were looted and burnt following days of street protests. The anger was informed by allegations of vote-rigging, but more seriously by discontent with a system that gave the opposition only one seat in parliament in spite of 40% electoral support across the country. Facing

the credible threat of a looming coup d'état, the Prime Minister appealed to SADC for support. SADC launched a military intervention to quell the unrest, and subsequently mediated between the political parties. The parties then agreed to establish an Interim Political Authority. This body, composed of two representatives of all the political parties, was mandated to negotiate a new electoral system and, in cooperation with the government, prepare the country for fresh elections (Makoa 2004). Meetings of the Interim Political Authority were co-facilitated by two of its members. Internal divisions and tensions with the government made this a difficult process and what was planned to be a two-year process lasted four years (Da Silva 2001). However, the negotiations eventually succeeded. Of note is the fact that while the international community, in particular SADC and the Commonwealth, remained supportive, the negotiation process was self-facilitated without further external mediation. The parties agreed on an MMP (mixed member proportional) model, aimed at compensating those parties who won fewer constituency seats than they would be entitled to under purely proportional representation. The objective was to ensure that the skewed representation caused by the first-past-the-post system was corrected. Two ballot papers would be used: one for the constituency candidate and one for the party of choice. The next election in 2002 was acclaimed by all observers as a success to be emulated by other countries in the SADC region and beyond (Kadima 2002).

In the 2007 elections both the ruling party and an opposition party (that had broken away from the ruling party) detected a loophole in the legislation. They established electoral alliances with small parties and registered their parties only for constituency elections (and therefore not for the proportional list). They then told their supporters to vote for their candidates on the constituency list, but for their alliance party on the proportional list. The result was that the ruling party effectively took control with a two-thirds majority, increasing its majority from 2002, while most of the smaller parties lost seats (EISA 2007, 2008).

The opposition cried foul and refused to accept the results. Several protest actions culminated in a national strike in March 2007, triggering memories of the rioting of 1998. The strike was suspended after two days when the Executive Secretary of SADC gave an assurance that SADC would intervene (EISA 2007). SADC subsequently appointed the former Botswana President, Sir Ketumile Masire, as mediator in the dispute. More than a year into the mediation, the process reached deadlock over an international resource person whom the mediator had invited to a seminar on the correct application of the MMP model. The government rejected this invitation. The mediator subsequently called a press conference and declared the government to be at fault on the most important agenda items (Masire 2009). The mediator thereby became an arbitrator. The government reacted angrily and Masire was obliged to withdraw, ending SADC's mediation.

It is important to note that by that time (July 2009) all other constitutional avenues to address the crisis had been exhausted. Because its composition was the bone of contention, parliament could offer no solution. The Independent Electoral Commission declared that it had no option but to accept the disputed alliance arrangements as the law did not explicitly proscribe them, and the Supreme Court ruled that the matter was political and that it had no jurisdiction over it.

The political vacuum created by the departure of Masire was dangerous. With no process in place to deal with the matter, the prospect of renewed street violence arose. However, neither the ruling party nor the opposition would benefit from such a scenario. The ruling party was not as strong politically as its majority in parliament suggested. Internal splits meant that it would in fact have had only a two-seat majority in parliament had it not been for its alliance arrangement (EISA 2007). Furthermore, it had never

been sure of the loyalty of the security forces. In 1994 it was the victim of a coup attempt, in 1998 rumours of an imminent coup led the Prime Minister to appeal to SADC for intervention, and in 2009 there was a mysterious assault on the Prime Minister's house. The opposition parties, on the other hand, even though they threatened to go to the streets, had equally uncomfortable memories of 1998. In addition, following Sir Ketumile's pronouncement they were confident that a continuation of the mediation would work in their favour.

A group of civil society actors operating primarily under the auspices of the LCN (Lesotho Council of NGOs) decided to intervene. Civil society had some mediation capacity because local and external organizations had made concerted efforts since 1998 to provide training to potential mediators. In 2008 the LCN successfully mediated a conflict between the taxi associations and government. In the light of this, and mindful of the success of the Interim Political Authority, they decided that Lesotho could deal effectively with its own conflict (Odendaal 2011). They realized that they themselves would not be accepted as mediators in such a high-profile conflict because of their relative youth and lack of sufficient social status. They would have to approach persons of greater gravitas for this role. The church leaders of Lesotho, as a collective body, stood out as most appropriate because of their stature in society and the respect afforded them. They lobbied the politicians and, within a month, secured the consent of all political parties to participate in a mediation led by the heads of churches. In addition to acceptance by the parties, the mediation effort was endorsed by SADC, with the church mediators presenting a report to the SADC Summit in Windhoek in August 2010 (SADC, 2010; Ntaote 2010). SADC also seconded a team of three facilitators who assisted the church leaders and attended three plenary sessions. The facilitators played a quiet, non-assertive role, and their presence was considered helpful as an indication of SADC's continued interest and support (Odendaal 2011).

The mediation process lasted 18 months. It seemed to make little progress initially, particularly on the issue of re-allocating parliamentary seats as the opposition demanded. During these difficult months the greatest achievement of the mediation was the fact that it kept all parties talking. In March 2011 a breakthrough was achieved when the parties agreed on the central issue of reform of the electoral law. This followed after the mediators invited a UN specialist on electoral systems to meet the parties and address some of their concerns about the application of the MMP system. They agreed to preserve the MMP system, but to use only one ballot paper, counted twice – once for the constituency list and once for proportional purposes. By that time the elections of 2012 were looming and the issue of the composition of the current parliament had lost its salience.

Approval of legislation to reform the electoral law did not translate into cordial political relationships, though, especially not during the months prior to the May 2012 election. Given the precarious balance of power and the opposition parties' enduring sense of grievance, the election campaign was tense. On several occasions supporters from opposition parties rioted at rallies addressed by the Prime Minister. A dozen people were injured in stone-throwing in one such incident. In March the deputy leader of the largest opposition party was assassinated at his home by unknown assailants. During these months the church leaders continued their intervention by convening a series of meetings of political leaders. Archbishop Emeritus Desmond Tutu, who had been Bishop of Lesotho during the late 1970s, was invited to one of these meetings to condemn the escalating violence at political rallies. He oversaw the signing by the political parties of an electoral pledge prepared at previous meetings and the resulting statement was published in full-page newspaper advertisements (Kraybill 2012).

The election itself was declared free, fair and peaceful by all observers but no party had won sufficient

votes to form a government. There followed a period of uncertainty and apprehension. The church leaders intervened again, calling a meeting of all political leaders at UN House, the headquarters of the UN in Maseru. At this meeting the political leaders pledged to honour the electoral outcome. Subsequently an alliance of opposition parties succeeded in forming a majority, which the Prime Minister accepted. He duly resigned and declared himself willing to play the constructive role of loyal opposition. At the ceremony at the national stadium where the first voluntary, constitutional transfer of political power in the nation's history took place, the former and new Prime Ministers warmly shook hands and embraced, twice, while the crowd roared (Kraybill 2012).

The church-led mediation clearly made a substantial contribution to political stability and the deepening of democracy in the country. Three features of this process are noteworthy (Odendaal 2011; Kraybill 2012). First, the mediation team was a complex and disparate group. The church leaders enjoyed respect and broad acceptance as a collective and not as individuals. In the past religious denominations had sided with competing political parties. Although this history has largely been left behind with increased ecumenical cooperation taking place, these church leaders were not necessarily of one mind about the crisis and its resolution. They selected a retired and well-respected bishop as convener of the group but his role was not that of lead mediator. Much energy therefore went into reaching consensus on the best strategy. The members of the team also avoided meeting as individuals with the parties. This strategy – to operate at all times as a team – had the advantage of achieving a broad-based legitimacy for the team, but also complicated and in some respects hindered the effectiveness of the mediation because of its cumbersome nature. The civil society actors who constituted a 'technical team' to support the mediation were a similarly disparate group with no clear leadership structure and weakly defined roles and mandates. It is evidence of their collective resolve that they managed to achieve a positive outcome despite the far from ideal organization of the team as a whole.

Second, while the mediation was nationally initiated and owned, this did not mean the absence of an international contribution. SADC maintained its interest in and support of the mediation. The crisis in Lesotho remained an item on its agenda and in this way SADC continued to apply some pressure on the parties to work towards resolving the crisis (SADC 2010, 2011). The UNDP office in Maseru played a particularly important role in support of the process: it not only funded the mediation team's operations but also provided a neutral venue at its offices for all meetings. More importantly, its senior management interacted regularly with the mediation team, brainstormed strategy with them and provided advice. In addition, it deployed an international mediation specialist on its staff to support the mediation. UNDP's discreet support was an essential factor in the eventual success of the process. Put differently, while Lesotho is a case of successful national mediation, it is also an example of the way international organizations can provide discreet but indispensable support to national processes.

Third, the church leaders were chosen as mediators for their moral authority but they had little expertise in electoral or constitutional issues, nor were they mediation experts. Their mediation strategy consisted mostly of chairing plenary sessions that for many months made little progress. The success that was achieved can be linked directly to moments when their authority combined effectively with the professional advice of the experts. They were, for example, reluctant to make use of caucusing or shuttle diplomacy to deal with deadlocks. The breakthrough in negotiations on the reform of the electoral law came when the church leaders accepted advice to bring in an international expert on electoral systems and allow him to meet the parties in one-on-one sessions to address their fears and concerns.

There was, therefore, a high level of interdependence between the three main actors in the mediation: the church leaders, the civil society technical team and UNDP. Everyone relied on the leadership, stature and moral authority of the church leaders. But without the initiative and drive of the technical team there would have been no mediation, and without the financial support and strategic advice provided by UNDP the mediation would have floundered. Much depended therefore on the way that collaboration between these actors was achieved.

National Peace Council, Ghana

Any discussion of national mediation in Africa must take note of an emerging trend on the continent, namely the establishment of national peace councils (or committees or commissions) with a standing mandate to mediate in intra-state conflict. The country that is setting the trend is Ghana, whose National Peace Council was established in 2006 and formalized by a bill in 2011. Southern Sudan's Peace Commission has been in existence since 2006 and is tasked to 'promote peaceful co-existence amongst the people of Southern Sudan' (GoSS 2011). In Kenya policy to establish a national peace council has been finalized (Office of the President 2011), while in Togo (Kumar 2011) and in Malawi (UNDP 2012) processes are underway to establish such a body. The draft constitution of Zimbabwe of July 2012 also envisages a National Peace and Reconciliation Commission (Art. 12.20–12.22). Ethiopia has had a National Peace Committee since 2010, but its objective is to manage local community conflicts rather than national conflict (Ministry of Federal Affairs 2010).

National peace councils in Africa and elsewhere have broader mandates than the mediation of conflict and have often been established to coordinate the pursuit of peacebuilding objectives in post-violence situations (Odendaal forthcoming). The Act that established Ghana's National Peace Council (GoG 2011) has broken new ground by providing much needed clarity regarding the role of such an institution and its position within the larger framework of a state's conflict management capacity. Ghana's experiment with a national peace council has attracted widespread interest. The Minister of Justice, Martin Amidu, states that 22 countries from across the world have shown keen interest in Ghana's institutionalization of mediation, not only in political conflict but also in civil litigation (Ziwu 2011).

The overarching mandate of Ghana's National Peace Council is 'to facilitate and develop mechanisms for conflict prevention, management [and] resolution and to build sustainable peace in the country' (Art. 2). Of note for our purposes is Art. 3(f), which requires the council to 'facilitate the amicable resolution of conflict through mediation'. The Act has thereby expanded the state's repertoire of conflict management options. It has not replaced the state's commitment to normal legal or security measures, but it has institutionalized the use of mediation as a primary response to social and political conflict. Peace councils are also established at the regional and local level with the same mandate and coordinated by the National Peace Council. The Act formally guarantees the Council's independence from political manipulation (Art. 30).

There is a specific history behind this development (Odendaal forthcoming). The northern region of Ghana in particular has been prone to violent communal conflict. Between 1980 and 2002 no fewer than 23 violent conflicts took place, mainly sparked by issues of succession to chieftaincy, inter and intra political party tensions, land rights, identity (religion and ethnicity) and access to mineral and economic resources (Ojiele 2007). These conflicts were often very destructive. The Konkomba-Nanumba conflict in 1994–1995, for example, led to almost 5,000 deaths, with 423 villages being burnt or destroyed (Assefa 2001). The Dagbon conflict of 2002 and following years – a conflict over succession to the Dagbon throne

– was deemed so serious that the government declared a state of emergency in the northern region of Ghana in 2003 (Bombande 2007). The conflict was deeply politicized, with the two main political parties, the then ruling NPP (New Patriotic Party) and the NDC (National Democratic Congress), taking opposite sides. The general elections of 2004 were threatened by the possibility of the conflict escalating into full-blown political violence.

The government's habitual reaction to these conflicts was a law and order response. The police or military would be sent in, order would be restored, a commission of inquiry would be appointed and its report would be largely ignored (Bombande 2007). A former Minister of the Interior declared: 'Our responses to these conflicts have at best been reactive. We have maintained a peacekeeping presence in the communities affected by violent conflict without being able to resolve the issues at stake' (Kan-Dapaah 2006). Since the mid 1990s, however, a new approach has been tried, driven largely by civil society, but with government support. Its focus has been on identifying the causes of the conflict and mediating agreements through inclusive processes, relying on the role of internal mediators. In the Dagbon conflict, for example, the primary mediators were traditional chiefs from neighbouring chiefdoms. The processes have enjoyed substantive support from mediation experts (Assefa 2001; Bombande 2007; Ojielo 2007; Odendaal forthcoming). With the declaration of a state of emergency in 2003, the government invited the UN country office to assist. Consequently a joint UNDP/UN Department of Political Affairs project was implemented that lent support to government and civil society in building capacity for mediation and its implementation. The new approach has delivered good results. The violence potential of the Dagbon conflict was largely defused and the elections of 2004 proceeded peacefully (Ojielo 2007). Success was also achieved in mediating other communal conflicts (NPC 2009, 2010).

The experience with mediation at the local level has inspired confidence in the approach among government actors, political parties, traditional leaders and civil society institutions in Ghana. The National Peace Council was formalized in 2011 with bi-partisan support: the legislative process was initiated in 2006 under the then NPP government but the bill was passed through a parliament under NDC control. The establishment of the Council was therefore the result of a growing confidence in mediation, a confidence that was rooted in experience and shared across the political spectrum, and the concomitant recognition of the limitations of a law-and-order approach.

The Council and its local structures have been relatively effective in dealing with local level conflicts, preventing their spread and defusing their politicization. It remains a question whether the Council will be effective in the context of serious national polarization. There has thus far been one opportunity for it to show its mettle in this regard. In 2008, when the election results that were coming in indicated that the race between the two main parties was neck and neck, tensions rose dramatically, particularly when radio broadcasts spread the news that the two parties were contesting the results of certain constituencies. Some banks closed early on 30 December 2008, the day the results were to be announced. Some airlines re-routed their flights, and in the capital the youth of both parties took turns to surround the headquarters of the electoral commission, threatening to resort to violence (Bombande 2011). Alerted by the sense of crisis, the Council engaged in shuttle diplomacy between the two presidential candidates of the NPP and NDC that went on right through the night while votes were being counted. The next morning the chairperson of the Council addressed a news conference where he announced the agreement reached between the two candidates. They both affirmed the mandate of the electoral commission to finalize and release results and committed themselves to non-violence, transparency and the need for ongoing dialogue. This press statement and the call for calm that was widely broadcast contributed to a general lowering of tension and anxiety. The dialogue that was facilitated between the two candidates that night

and in subsequent days contributed substantially to the eventual peaceful transfer of power (Bombande 2011). According to Minister Amidu: 'We nearly came to catastrophic elections in 2008. Members of the (National Peace) Council sat down with the presidential candidates and persuaded them to accept the election results, regardless of the outcome' (UNDP Newsroom 2010). The fact that a peaceful transfer of power took place in 2008 has strengthened Ghana's reputation as a stable, democratic country. The National Peace Council may rightfully claim to have made an important contribution to this achievement. Besides its ability to depoliticize local conflicts, a particularly noteworthy characteristic of the Council is its ability to intervene at short notice, which means it has considerable potential to prevent the escalation of tensions and the intensification of conflict and violence.

Analysis

The complementarity of international and national roles

National mediation does not preclude international engagement. The complex reality of peace processes, as Sisk (2009, 1) points out, is that peace is seldom achieved through a single event or agreement. Rather, peacemaking involves 'extended or iterative bargaining processes that unfold over time'. The church-led mediation in Lesotho was one component of the longer process of creating a suitable electoral system. It followed and was linked to SADC's mediation. Furthermore, the reliance on internal mediators in Lesotho derived confidence from the earlier experience with the Interim Political Authority, which was an outcome of the 1998 SADC mediation subsequent to the military intervention by SADC. Internal and external processes are therefore not mutually exclusive but potentially complementary.

Peace processes, as Sisk (2009) goes on to say, are also multilayered in that they take place at various levels, from community-level reconciliation to national elite negotiations to international engagement. Ghana's National Peace Council grew out of successful local level mediation, but at the same time drew strength from the UN's capacity-developing support. In South Africa regional and local level mediation under the auspices of the National Peace Accord supported the political transition, while at the same time international observers from the UN, the EU and the OAU demonstrated the international community's attention and support. National mediation, therefore, is not an insulated process. It invariably develops in interaction with other processes, including initiatives by external actors.

Leverage

A key issue in considering the value of national mediation is the mediator's 'leverage' to influence the decisions and behaviour of conflict parties. It is an issue that has divided scholarly opinion. The dominant position, not only in the literature but also in practice, is that a mediator is chosen on the basis of the mediator's ability to exercise decisive leverage (Touval & Zartman 1985; Bercovitch & Schneider 2000; Beardsley 2009; Sisk 2009). Leverage, defined as the 'resources of power, influence, and persuasion that can be brought to bear on the parties to move them to agreement', is seen as 'the ticket to mediation' (Touval & Zartman 1985, 12). In this view, mediators who lack the ability or hard leverage to dislodge the intransigent positions of parties, either by withholding or by promising significant financial or other support, are bound to fail. National mediators, however, are by their nature fairly powerless. They do not control substantial financial, military or diplomatic resources to use as carrots or sticks. They may

have considerable moral authority to use as soft leverage, but moral authority is but a lightweight tool for stopping civil wars. In reality national mediators' effectiveness depends almost entirely on their ability to instil confidence in their role as facilitators of negotiations.

National mediators, whether by conviction or necessity, must therefore employ a confidence-based approach to mediation (Assefa 1992; Nathan 1999, 2006). This approach, in contrast to the power-based approach that relies on leverage, assumes that violent conflict is caused by unresolved social tensions within a society, such as may be caused by the exclusion of or discrimination against certain sections of the society. The material causes of conflict give rise to and are exacerbated by psychological factors such as distrust, animosity, fear and frustrated needs in respect of identity, security, freedom and justice. These 'psycho-political dynamics' (Nathan 1999) affect the behaviour of the parties and are resistant to coercive measures. It is improbable that people will be coerced into giving up their hatred, fear and distrust. The task of mediation is therefore to create conditions where the material causes of conflict, as affected by the emotions and perceptions that have become entangled with them, can be addressed constructively by the parties involved. For this purpose the primary aim of the mediator is to inspire sufficient confidence in all parties that a fair process of negotiation is possible and that their interests and needs will be respected.

The only leverage available to the national mediators in South Africa, Lesotho and Ghana was the confidence that the parties had in their integrity and ability to facilitate talks. This did not mean that no pressure was exerted on the parties. In South Africa international pressure to encourage negotiations was considerable, but when the actual negotiations started the international community remained 'interested but largely unentangled observers in the negotiation process' (Bouckaert 2000, 237; see also Sisk 2009, 8, 83–112). This situation therefore exemplifies the view that Nathan (1999, 2005) has repeatedly advocated, namely that coercion, when necessary, should be exerted by actors other than the mediator. For the sake of productive negotiations, the mediator must enjoy the trust and voluntary collaboration of all the parties.

In the case of Lesotho the mere fact that the crisis had been placed on SADC's agenda constituted a form of external pressure on the conflict parties and the government in particular. The pressure was admittedly much milder than explicit international sanction, though Lesotho's history with SADC interventions has to be kept in mind. A repeat of the 1998 military intervention was not on the cards but Lesotho is not in a position to ignore its neighbours' opinion, especially not that of South Africa on which it depends economically. Even when its mediation effort failed, SADC continued to discuss the Lesotho crisis and appeal to all the parties to resolve the matter (SADC 2010). However, SADC did not interfere with the church-led process.

These two cases provide evidence of a form of complementarity between international pressure and a confidence-based national approach to mediation (see Bloomfield 1995; Svensson 2007). National mediation does not exclude international involvement. International actors apply pressure where necessary, freeing the national mediators from having to do this themselves. And when the parties start talking, international actors move into a supporting role, while not interfering with the national mediation process.

Conditions for viable national mediation

Under what conditions is national mediation feasible? Why would conflict parties prefer national mediation if they can call on the services of international mediators who presumably have greater clout? The case studies offer possible clues. National mediation is an option when the main protagonists distrust international mediation, when there is sufficient consensus that a negotiated outcome is desirable and achievable and when the conflict parties share confidence in the integrity and ability of the national mediators.

The first condition is strongly suggested by the South African case. The ANC and the NP government were both, for their own reasons, adamant that international mediation was not an option. They shared the perception that international mediation would allow external actors undue influence over the direction and substance of negotiations; in other words, they objected to the leverage that international mediators would exercise. Coupled with this perception was their shared confidence in their ability to reach a negotiated settlement – a confidence that had been built up over five years of discreet talks-about-talks. Beardsley (2009) has investigated the reasons why parties would choose ‘weak’ mediators rather than those with substantial leverage. He finds such a choice puzzling, since strong mediators can perform all the mediation functions better than weak ones. Apart from ‘supply-side’ dynamics (strong states do not necessarily want to mediate), he concludes that the choice of weak mediators is the result of ‘actors hedging their commitments to the peace process when they suspect their opponents will use third-party involvement insincerely for ends other than peace’ (Beardsley 2009, 274). In other words, they choose a weak mediator because they suspect that their opponents are insincere. It is therefore safer to choose a weak mediator in order to maintain some form of control. The South African case study suggests that an opposite explanation is possible: parties select weak mediation not primarily because they distrust their opponents, but rather because they distrust the agendas of strong mediators. They also choose weak mediators because of their confidence in an internally negotiated rather than externally forced solution and their commitment to such an end.

This last statement is important because it implies that national mediation is *not* an option when the conflict parties show no commitment to an inclusive solution. Madagascar provides an example in this respect. In early 2009 the UN sent a high-level delegation to explore how best to deal with the emerging political crisis that eventually saw President Marc Ravalomanana deposed through military intervention. The UN officials were met by members of the Malagasy Council of Churches (FFKM), who informed them of the FFKM’s longstanding role as a mediator in the country and made a convincing case why the crisis resolution process should be nationally owned. They argued that the multi-party democratic system had a low level of credibility and that the Malagasy people generally distrusted politicians because of the persistence of neo-patrimonial politics (interview, C Spies, member of UN delegation to Madagascar, Stellenbosch, 21 September 2012; see also ICG 2010). This argument strengthened the case for internal mediation because it implied that a high level of local understanding and knowledge should inform the mediation. However, not much came of the FFKM’s efforts. There was more than one reason for its failure but what is important for the present paper is the fact that the conflict parties were locked in a zero-sum game, with no political will to find inclusive solutions. National mediators cannot impose a mediation process on parties; they rely instead on the readiness of parties to pursue negotiations. SADC eventually assumed the role of mediator but, in spite of an agreement on a roadmap to peace, signed by the parties’ leaders in 2011, the lack of progress is clearly demonstrated by the refusal of the current President, Andry Rajoelina, to allow his predecessor and political opponent to return to the country as the roadmap stipulates (AIIAfrica 2012).

National mediation also relies for its success on the availability of national actors or institutions with sufficient credibility as mediators. The National Peace Council in Ghana was the joint creation of the two political parties that were in conflict over election results in 2008. The persons serving on the Council were appointed, through bipartisan consensus, on the grounds of their stature in society. As a consequence the two presidential candidates respected the Council's intervention. The National Peace Council Act does not compel parties to collaborate in mediation; rather, their collaboration reflects the parties' confidence in an institution of their own creation. In Lesotho the choice of national mediators was to some extent a desperate measure in response to the political vacuum created by SADC's failure, but the church leaders inspired sufficient confidence to get all the parties to collaborate. It is also noteworthy that both Ghana and Lesotho had had previous positive experiences with internal mediation, pointing to a growing confidence not only in the capacity of local mediators to fulfil that role, but in mediation itself as a conflict resolution method. In all three countries discussed here civil society institutions, with support from international institutions, have promoted mediation and developed mediator capacity.

This level of trust in national mediators is, however, still exceptional. The more common situation is rather to rely on the leverage of international mediators. Nathan (2009, 15) mentions 11 countries in Africa where mediation took place under the auspices of the AU or regional organizations before 2009. In Kenya, for example, when the election crisis of 2007–8 broke out there were efforts to deal with it through national mediation. However, the leader of the main opposition party, Raila Odinga, made it clear that he would only consider mediation if it was under international auspices (Kathina Juma 2009). He therefore made the internationalization of mediation a precondition to his participation. His concern, by implication, was that national processes would not be able to withstand manipulation by the ruling party and would not have the leverage to ensure the ruling party's collaboration. In another example, in 2011 religious leaders in Malawi approached President Bingu wa Mutharika with an offer to mediate in a stand-off with civil society protesters that had led to 20 deaths, but he declined their offer and accepted the UN as facilitator of the talks.

In a strongly polarized context, therefore, conflict parties do not turn to national mediators as a matter of course. Successful national mediation relies on the comparatively rare combination of a political preference and will to be self-reliant and sufficient confidence in the credibility and ability of local mediators.

Composition and capacity of mediation teams

Wehr and Lederach (1991) have coined the term 'insider-partials' for local mediators. The 'insider-partial' is 'the "mediator from inside the conflict", whose acceptability to the conflictants is rooted not in distance from the conflict or objectivity regarding the issues, but rather in connectedness and trusted relationships with the conflict parties' (Wehr & Lederach 1991, 87). 'Insider-partials' are persons who belong to the society experiencing the conflict and who, therefore, are not impartial regarding the outcome of the conflict. They are trusted as mediators not because of their objectivity or lack of bias but rather because of the quality of their relationships with a wide spectrum of stakeholders. They are also trusted because they will have to live in the new dispensation that is being negotiated. They will not pack their bags and leave as soon as the agreement is signed. The term 'insider-mediators' is also used at times to denote this category of mediators (Mason 2009).

There is, however, an obvious difficulty. National mediators, as we have noted, are not impartial. How then can they be trusted by all conflict parties? Archbishop Tutu, for example, who co-chaired the negotiation

of the South African National Peace Accord, was an outspoken critic of the apartheid regime. While he commanded respect for his personal integrity, he was not at the time sufficiently trusted by government to be the sole mediator of such an important process. The problem was solved by opting for co-mediation: John Hall, a respected white businessman who was acceptable to the government, mediated the process jointly with Archbishop Tutu. In numerous regional and local level mediations in South Africa the same recipe was followed: joint mediation by black and white insider-partials (Odendaal & Spies 1996). The logic of this arrangement is that the credibility of the mediation effort is achieved by the composition of the team of mediators. Within the team are individuals who enjoy the trust and confidence of one side in the conflict, but as a team they provide balance and equity (Lederach 1997, 50).

This arrangement undoubtedly contributes to the credibility of national mediation. In Lesotho it was the collective of church leaders that was acceptable, not the individuals on their own. The composition of the National Peace Council in Ghana similarly aims at achieving broad acceptability (GoG 2011, Art. 4.1). The planning committee of the multi-party negotiation forum in South Africa was a group of representative insider-partials who had to ensure procedural fairness and productive negotiations. In contrast, in Malawi in 2007 an agreement that was mediated by a group of religious leaders to break an impasse in parliament regarding the passing of the budget was not signed by the President apparently because all the mediators happened to come from the same region (interview, Dr Lazarus Chakwera, Assemblies of God church leader and mediator, Blantyre, Malawi, 15 February 2012). Regional political rivalries dominated the political culture at the time, and none of the mediators came from the President's region.

A team of mediators who, by proxy, represent the major parties in conflict does not, however, necessarily ensure efficiency. As the Lesotho example shows, the task of achieving team consensus on the best strategy is arduous and time-consuming, and because of the lack of strong leadership in such a situation the implementation of strategy can be clumsy. Furthermore, in such an arrangement mediators are appointed not because of their skill in mediation but rather because of their stature in society and their relationships with specific actors. Yet mediation is a specialized activity that requires a high level of expertise (Nathan 2012). This presents a problem: how to ensure that the mediation team operates at a sufficient level of competence and skill. This is perhaps one of the most daunting challenges of national mediation: how to ensure that there is productive interaction between the national mediation team, who have stature and convening clout, and the skilled mediators, who have knowledge and experience.

In South Africa the best example of such a productive interaction was displayed by the CBM, which provided expert advice and support to the co-mediators of the National Peace Accord and to the planning committee of the multi-party negotiations. Its success was due to its low-key and discreet profile, yet high level of professionalism. This approach earned them the trust of the mediators and ensured productive cooperation. The critical breakthrough in the church-led mediation in Lesotho was achieved when the advice of the mediation experts was successfully implemented by the local mediating team. It is therefore important that national mediation receives professional support and advice from mediation experts, but in such a manner that the stature and credibility of the mediators is not undermined.

Benefits of national mediation

National mediation undoubtedly presents challenges. First it requires shared political commitment to self-reliance. Then organizing a team of insider-partials is complex. And mediation is time-consuming:

mediators have to devote days on end, without any release from the pressure of their other commitments and often without compensation, to a taxing and sometimes thankless task.

However, national mediation has significant benefits. In his report the UN Secretary-General (2012, 6) identifies three advantages of using national mediators: their legitimacy, their relationships with conflict parties, and their in-depth knowledge of their society, its history and local conflict resolution approaches. Additional benefits include the enhancement of self-reliance and social cohesion, the violence prevention potential and the positive impact on implementation.

Regarding the *legitimacy* of national mediators I have noted that much depends on the political interests of conflict parties and the stature of national mediators. It is therefore not a given that national mediators have greater legitimacy than international mediators.

The *relationship of national mediators with the conflict parties* can contribute significantly to the success of mediation. An established relationship of trust enhances confidence in the mediation process and enables constructive communication. The success of the church leaders in Lesotho, the National Peace Council in Ghana and South African mediators such as Braam Viljoen relied on established relationships of trust with the parties .

The benefit of *local knowledge* is significant. Intimate local knowledge strengthens mediation because it enables a more nuanced understanding of the conflict. Kalyvas (2006, 42) mentions the impact of the 'urban bias' on our understanding of conflict and violence: the way information and conceptualizations of intra-state conflict are distorted by an over-reliance on written sources, top-down perspectives, ideological or normative motivations of participants, and fixed, unchanging identities and choices. Oral sources, bottom-up perspectives, non-ideological motivations of participants and fluid identities and choices are ignored. National mediators are less susceptible than external actors to urban bias and are more in tune with what is really driving the conflict and what the potential is for feasible and sustainable solutions. Gurses et al. (2008, 150–1) conclude their study on the impact of mediation on the duration of peace agreements by saying that much more attention needs to be paid to the quality of an agreement. This is determined by intangible aspects such as 'the complex interaction patterns between adversaries and mediators, whether information barriers are overcome, whether procedural justice is achieved or whether the underlying conflict issues are resolved'. Intimate local knowledge enables an appreciation of these factors.

Notwithstanding these benefits, precisely because of their immersion in local knowledge and understanding, national mediators may share the society's blind spots. They may lack the necessary distance and objectivity to move beyond stagnated analyses of the conflict and discredited options for resolution. The experience in Lesotho demonstrates the benefit of constructive interaction between national mediators and international actors. At times, therefore, relying solely on local knowledge may deprive the mediation process of the benefit of fresh perspectives.

Perhaps the strongest benefit of internal mediation is its potential to *enhance social cohesion and self-reliance*. In an article that captures some of the lessons from South Africa's experience, Nicholas Haysom (2002), a constitutional expert who served on the ANC negotiation team, comments: 'Constitutional negotiations (negotiations concerning the causes of bitter division) should be approached as an opportunity for nation-building and promoting a common culture of national self-reliance.' The negotiation

of an agreement, in other words, should not be the sole objective. Strengthening social cohesion and self-reliance through the manner in which the process is conducted is equally important. This objective is more likely to be achieved through national than international mediation, especially if the latter is experienced by at least a section of the population as an imposed process. The negotiations in South Africa gave the vast majority of South Africans a sense of national identity and purpose (Bouckaert 2000, 256). Of course such social cohesion was relative, tentative and not equally valued by all (Lloyd 2001), but compared to the pre-negotiation situation overall progress was remarkable. Ron Kraybill (2012, 3), who was the UN's Peace and Development Adviser in Lesotho at the time of the church-led mediation, mentions a remark by one of the mediators at the conclusion of the process: 'We never thought we could take it so far', he said, 'We never thought we would see this happen in Lesotho'. Kraybill concludes: 'This renewed sense of confidence in local capacity may in the end be the most important outcome of the experience.' Eziakonwa-Onochie (2011), UN Resident Coordinator at the time, emphasizes the importance that the mediation process has had for deepening democratic values and concludes: 'The dialogue and quiet mediation that has served the nation well in recent months can serve as a model for addressing future challenges.'

A further benefit of national mediation capacity is its *conflict prevention* potential. In Ghana the standing mediation mandate of the National Peace Council enabled it to intervene at very short notice during the election crisis of 2008 and to ease the tension. It also contributed, through its local structures, to the resolution of local conflicts, thereby defusing their potential to cause national instability. In Lesotho the church leaders realized that the mediation of an agreement on the electoral law was not sufficient; they had to prevent the violence potential that the elections posed. Their subsequent actions helped to ensure not only relatively peaceful elections but also a successful transfer of power. In South Africa the peace committees under the National Peace Accord also helped to prevent violence. To appreciate the benefits of national mediation, what national mediators can do should be weighed against the elaborate processes required to get an international mediation on the road. International mediation is reactive, whereas national mediation is potentially preventive. A further benefit is that internal mediation capacity remains available in the country to monitor the implementation of agreements and assist when complications arise. The mediators do not leave as soon as the agreement is signed.

Lastly, the potential importance of national mediation for the successful *implementation* of agreements is a matter that deserves further monitoring and research. One of mediation's biggest difficulties is implementing agreements. Implementation failures are a major cause of the recurrence of violence and can destroy the public's confidence in those responsible for implementation, in the peace agreement and in the value of political dialogue (IDPS 2011). In fact, the implementation rather than the signing of an agreement should be the ultimate measure of success. While no generalized conclusions can be drawn from this paper, it is noteworthy that in all three cases I examine here the agreements reached by the parties were implemented. The satisfaction of South African citizens with implementation was tested through a questionnaire in 1999. The great majority expressed satisfaction, the IFP's disappointment with the broken promise regarding international mediation being the most serious complaint (Lloyd 2001, 311).

Does national mediation contribute to the successful implementation of an agreement because, by opting for national mediation, the conflict parties demonstrate substantial commitment to owning the process and securing a successful outcome? Does the reliance on a confidence-based approach to mediation play a role? In other words, does national mediation improve the chance of successful implementation

because it relies on the voluntary participation of protagonists, respects the needs, interests and fears of the parties, and seeks an inclusive, mutually agreeable solution? Does the local knowledge that underpins national mediation ensure that agreements are implementable? These are intriguing questions that the case studies do not answer conclusively but that require further research.

Conclusion

Are national mediators able to usefully lead mediation in intra-state conflict? The answer, as far as experience in Africa is concerned, is a qualified yes. When the protagonists share a common distrust of international mediation, or when sufficient consensus exists that a negotiated outcome is achievable without international intervention, and when the conflict parties share confidence in the integrity and ability of the national mediators, national mediation is a credible option.

Is national mediation a desirable option? Is it, in other words, an option that should be promoted? Given the small sample of cases examined here it is not possible to give a definitive answer, but if national mediation consistently demonstrated the benefits described above it would certainly be an option worth promoting. In particular, if national mediation as a rule enhances social cohesion and self-reliance, contributes to conflict prevention and supports the successful implementation of agreements, its value is indisputable.

Two sub-themes that run through the case studies are important when considering the promotion of national mediation. First, successful national mediation builds on previous successes with mediation, even if at sub-national level. When a political culture develops that has confidence in mediation as a conflict resolution option, it encourages increasing reliance on mediation. Second, successful national mediation relies on the existence of mediation skill and capacity. It is wrong to assume that social stature is a sufficient qualification for mediation. Investing in mediation capacity in a society is therefore a worthwhile proactive strategy.

The National Peace Council of Ghana is a significant development in this respect because of the way mediation has been institutionalized. It has proven its value. When considering the replication of this model, however, note has to be taken of the specific history of the Council, the legitimacy of which is rooted in the bipartisan confidence in mediation that has been built up over years. If a council is artificially imported and therefore less legitimate, it will have less likelihood of success.

Lastly, national mediation does not assume the absence of international engagement. National mediation has succeeded *inter alia* because of the various kinds of support offered by international actors: exerting pressure on conflict parties, building the mediation capacity of local institutions and individuals and providing financial, logistic and substantive support. The way the support is provided is important, though. National mediation has succeeded when international actors have supported without interfering. The essence of feasible national mediation is a society's confidence in the ability of its own members to resolve the conflict. If the international community undermines this confidence, it will negate some of the benefits that make national mediation a worthwhile option.

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A CRITIQUE OF WESTERN CONFLICT RESOLUTION FROM A NON-WESTERN PERSPECTIVE

PAUL E.SALEM

THE FOLLOWING ARE reflections on the premises and assumptions of Western conflict resolution as viewed from another cultural perspective, in this case, Arab. They derive from exposure to conflict writings and simulations in a Western milieu and the experience of teaching conflict resolution in a non-Western context, namely in Beirut. The essay aims to present a tentative critique of some hidden assumptions in the Western approach to conflict resolution, and to provide some insights into the macro-cultural framework to which Western conflict resolution approaches must adapt if they are to be used in the Arab world-and perhaps also in other areas of the non-Western world.

One must make clear from the beginning that any attempt to make broad generalizations about two diverse and loosely defined cultural and social groupings as "the West" and "the Arab world" is fraught with dangers of reductionism, essentialism, and simplification, to say nothing of Orientalism (Said 1978). The effort of finding general cultural patterns and tendencies, however, is, I think, well worth the risk and the effort; and the generalizations presented are only intended as food for thought and signposts for further research rather than as definitive conclusions. Also, it should not be understood from the text that Arab society does not have effective conflict resolution methods of its own. Indeed, such methods are widespread and considerably effective. This paper, however, is more narrowly concerned with developing a sober view of Western approaches to conflict resolution than with exploring indigenous Arab methods of conflict resolution.

Peace and Empire

The Western community of conflict resolution theorists and practitioners operate within a macro-political context that they may overlook, but which colors their attitudes and values. This seems remarkably striking from an outsider's point of view and is largely related to the West's dominant position in the world. All successful "empires" develop an inherent interest in peace. The ideology of peace reinforces a status quo that is favorable to the dominant power. The Romans, for example, preached a Pax Romana, the British favored a Pax Britannica, and the Americans today pursue - consciously or not - a Pax Americana. Conflict and bellicosity is useful - indeed essential - in building empires, but an ideology of peace and conflict resolution is clearly more appropriate for its maintenance.

Indeed, for many outsiders, it is quite common to view Western international conflict resolution policies, whether in the Arab-Israeli peace process, the UN Security Council, or elsewhere, as merely stratagems for defusing opposition to

and rejection of the status quo. To the dominated members of a "pseudo-imperial" world system, peace may be something that they might indeed seek to avoid, and conflict may be an objective that they might seek to invigorate in order to destabilize the world system and precipitate its crisis or collapse. They may prefer to bum the temple down, rather than succumb to the worship of a foreign god.

The debatable virtues of peace and the underestimated virtues of battle

Other than the interest a triumphant West naturally has in peace, the concept of peace itself has a particular and positive cultural valuation there. The centrality of the idea that peace is, in any conditions, "good" and war is necessarily and in all circumstances "bad" is to some degree peculiar to the Christian worldview. This is not to say that other religions do not value peace or that the Church in history did not succeed in devising intricate theological arguments for a theory of the Just or Good War; in its central precepts, however, the Christian religion does specifically exalt the categories, such as socio-political justice or obedience to a strict moral code.

This exaltation - or over - valuation - of peace and blanket denigration of war and the traditional military virtues, to a considerable degree, characteristic of the Christian worldview; but it is not a central part of the ancient Greek, Babylonian, Roman, Jewish or Islamic worldviews.

In addition, early Christianity adopted outward doctrines of peace partially to insinuate itself throughout the Roman Empire; Islam, however, although it places peace as an exalted virtue, openly declared a sacred political program, and set out unapologetically from the beginning to back up its proselytism with force. The Prophet himself and all the Rightly Guided Caliphs were proud warriors. In this context, war in itself is not shameful, nor is peace necessarily and always good. With regard to conflict resolution, the Western blanket assumption that working for peace is always, regardless of circumstance and conditions, a good thing might be questionable in other cultural contexts.

Conflict without struggle and the end of history

The Western world of the post-World War II era has largely abandoned the ideal of struggle which characterized its earlier history. Pre-World War II Western history, on the other hand, is largely marked by intense and often violent struggles to establish national unity, national independence, socioeconomic equality, and/or popular government. The more successful among western nations also prospered by conquering other nations and struggling for world supply and consumer markets.

The ideal of struggle was especially exalted in the nineteenth century philosophies of Hegel, Marx, and Nietzsche; it was lent a pseudo-scientific basis by Darwin and bastardized by the national supremacy of German and Italian

fascism. Moreover, among the decisive events that shaped modern Western political history—the revolutions of 1776, 1789, 1848 and 1917; the wars of Napoleon; and World Wars I and II was the ideal of struggle that was held in highest regard.

As Francis Fukuyama (1992) describes, however, many in the West today enjoy an indeterminate satisfaction that they have somehow reached "the end of history." This may not be completely illusory: in politics the "West" has achieved stability, orderly transitions of power, widespread freedoms, protection of basic rights, and participation in government; in economics it has achieved high levels of wealth and reasonable patterns of wealth distribution; class conflict has been more or less resolved in favor of a large middle class; in other social matters, education and literacy are widespread, health care is adequate, and popular culture through various media offers amusement and enjoyment of leisure time to a majority of the population. The West, in other words, may see nothing major that it still needs to struggle intensely in order to secure. It has reached a situation of relative self-satisfaction. From the West's perspective, what is, in a broad sense, is good, and should be preserved.

Outside the context of struggle, however, conflict is an overwhelmingly negative phenomenon, notable only for its harmful side effects of violence, suffering, and general discomfiture. If the macro picture is indeed positive, as described above with regard to the West, then conflicts are, in a sense, troublesome brush fires that need to be put out rather than incipient struggles that need to be fanned. Obviously, from the outside — for example, Arab — perspective, wherein major and, perhaps, revolutionary change seems, to many, necessary at the level of political, economic, and social affairs, the side-effects of conflict are not nearly as significant as the value of the struggle itself if it succeeds.

Indeed, in the major ideological currents that have defined political thinking in the modern Arab world — nationalism, Marxism, and Islamic fundamentalism — struggle has been held in high regard. In the thought of Arab nationalism (and indeed various regional nationalisms such as Syrian nationalism and Egyptian nationalism) the struggle — often violent — against external colonial powers and internal collaborationist forces was at the center of the nationalist worldview (see Aflaq 1959 and Saadeh 1959,79). In the Marxist and leftist currents that swept the Arab world, especially during the 1950s and 1960s, an irreducible struggle between the working class on the one hand and the local and international capitalist classes on the other was central. In Islamic fundamentalism of the radical type such as that challenging power in Algeria, Egypt, Jordan, Syria, Lebanon, and other Arab countries, a central struggle is posited between the minority of true believers and the majority of the population that is Muslim in name only. (A Qur'anic verse which is cited frequently by the

main ideologue of modern Islamic fundamentalism, Sayyid Qutb, is "[F]ight them until persecution is no more, and religion is all for God." [Qur'an 2:93, quoted in Qutb 1964, 152.) In each of these cases, struggle, and the conflict that comes with it, is central to the group's political view and is regarded, in some cases, as a progressive, invigorating, and purifying process.

Utilitarianism and the comfort culture of the twentieth century

Western conflict resolution relies heavily on the assumption that pain is bad and pleasure, or comfort is good. It is accepted as obvious that the suffering, physical or otherwise, associated with conflict is one of the main inconveniences that conflict resolution practitioners try to eliminate. First, this assumption in itself that suffering is bad and comfort is good required a significant philosophical revolution in the West to become accepted. It was the task of nineteenth century utilitarian philosophers, like Jeremy Bentham and John Stuart Mill, to make this principle a fairly widely accepted premise of modern Western culture. It flew - and still flies today among other cultures - against the more original principle that "good is good and bad is bad," where the first usages of good and bad in this phrase are defined in general moral or religious terms having nothing to do with pleasure or pain. The focus of Western conflict resolution theorists on the suffering generated by conflict rather than on the justice or morality of the cause may not strike resonant philosophical cords in other cultures. On the contrary, suffering itself in many cultures, including pre-modern Western culture, enjoys a fairly high valuation as a means for moral or spiritual purification or a necessary divinely-ordained component of life.

Second, the belief that discomfort is an isolatable evil and one that can be eradicated seems a characteristic of twentieth century postwar Western culture. With advances in health care, economic standards of living, and home appliances, and a vigorous media culture of consumerism and immediate-needs-satisfaction, the modern Western urbanite or suburbanite lives in a world where comfort is achievable and discomfort is limited if not eliminated. In this context, suffering associated with conflict stands out. In order societies, however, where levels of socio-economic development in virtually all spheres are still considerably behind those of the West, comfort itself is the aberration, and discomfort and suffering are more familiar companions of life. In that context, the suffering or discomfort associated with conflict does not stand out; it blends in with a fabric of discomfort and suffering that embraces most aspects of life. The Western conflict resolution emphasis on the necessity of resolving conflict because of the salient discomfort that it brings with it may not be relevant in a social setting in which discomfort is widespread. People there may give less importance to the discomfort generated by the conflict and more importance to the justice or outcome of the dispute.

Third, there seems to be a hidden assumption among the Western conflict resolution community that physical suffering - to be precise, physical violence-is in a category of unacceptable suffering all its own. This assumes a valid and clear-cut distinction between physical and non-physical suffering along the continuum of suffering. The confusion here stems partly, I think, from the pleasure-pain utilitarian philosophy and the acculturation to physical comfort, both described above. Is physical pain indeed more painful than non-physical pain? Is a serious flesh wound worse than a serious injustice? If we gave a person a choice between getting punched in the face or having their home taken away from them, which would they choose? If we gave them a choice between losing their life, or losing their country? Injustice, economic need, political need (struggles for liberty or freedom from oppression) are all, in many cases experienced as acute non-physical suffering. The definition of suffering itself, therefore, needs considerable clarification and specification. It may not mean the same thing from one culture to the next. In the Arab world as well, suffering is not something necessarily to be shunned, nor is physical pain or sacrifice particularly worse than non-physical losses like loss of honor, loss of patrimony, loss of face, etc.

Prometheus and Sisyphus

The West is riding at the crest of a wave of success at many levels. It is enjoying the later stages of a period of astoundingly rapid advances that began with the Italian Renaissance and expanded with the Industrial Revolution. With a record of Promethean achievement in technological, economic, political, social, and intellectual spheres, and with a modern history of continuous development, the West enjoys a basic optimism that things can be changed and that change can be for the better. World War I, World War II, the German holocaust, and the development of nuclear weapons have dampened but not extinguished this optimism.

This Arab and Islamic world, by contrast, is in the trough of a wave of decline and defeat. The heyday of Arab-Islamic culture, politics, economics, and technology began to fade in the twelfth and thirteenth centuries; the history of the past seven centuries has largely been one of stagnation and decline from that apogee. The legacy of this period is partially a pessimism that things cannot easily be changed, that change may often be for the worse, and that the forces that determine change are beyond one's control. For conflict resolution, the optimism of Westerners who approach conflicts with the confidence that they can be managed and resolved, contrasts sharply with the pessimism of others who may regard conflicts as inherently unresolvable or unmanageable, and for whom the whole project of conflict resolution may smack of naive over-optimistic enthusiasm.

could be "right," even if their positions are contradictory to one another - never mind Aristotle's logical premise on which most Western thought was subsequently built, that a thing must be either "A" or "Not A"; from the Postmodern standpoint it could be "A" here, and "Not A" somewhere else.

This is a great boon to modern approaches to conflict resolution, in which it is essential for parties to a conflict to be open to the possibility that while they may be right, so may the other parties. Postmodernism's mood of relativism allows an easy acceptance that the interplay of right and wrong is not necessarily a zero - sum game. In other more traditional cultures, that could best be described as pre-modern or modernizing, rather than postmodern, there are stricter codes of right and wrong and more rigid accounts of truth. From their perspective, the interplay of right and wrong is more likely to be a zero - sum game: "I am either right or wrong; and to the degree that I am right, my opponent must be wrong, and vice versa." This mode of thinking makes several aspects of modern conflict resolution techniques (such as, for example, formulating a problem in a way that satisfies all parties (Moore 1986, 18)) difficult to carry through.

"Flower Power" and the new negotiation

The credo of individual openness that was part of the cultural revolution of the 1960s and 1970s in the West has found its way into Western conflict resolution techniques. Most Western conflict resolution manuals start with several exercises in which opponents are supposed to "open up," talk about their "personal experiences," "feelings" or "deep interests," and develop "relationships" with their opponents "as individuals." This segue into the negotiation proper may seem natural and comfortable to Westerners, but it may go against the grain of members of many other cultures. "Opening up," rather than maintaining and reinforcing formal roles, may be a highly distressing and counter-productive process that may alienate the participant from the negotiation process and from his negotiation partners and opponents. In many non- Western negotiation situations, it might be wiser to increase the level of formality and social role-playing in order to get the negotiations going, rather than to increase the level of personalization and individual self-revelation or to engage in game-playing to supposedly bring out the Jungian "inner child."

The role of the good citizen

The West has already undergone the processes of centralization, bureaucratization, atomization, rule-formation and rule-acceptance that was described by Weber as characteristic of modernization. One of the results of this process is the production of the "good" citizen/subject who generally accepts authority and rules (even if fairly anonymous), pays his taxes, stops at red lights

Conflict resolution and the "Scientific" Worldview

Western culture has internalized the natural mechanistic universalism of Thales and the atomism of Democritus, both of which provided a large part of the philosophical foundations on which the West's scientific and technological advances were built. Both allow a view of conflict resolution in which conflict is seen as the result of a clash of natural forces among discrete and independent units. The forces can be understood and resolved, and the atoms can be independently identified and dealt with. This is a particular worldview, and is profoundly different from others, such as a truly religious worldview in which conflict is the result of a struggle between divine, devilish or profane forces; a moralistic worldview, in which conflict is the result of a natural struggle between right and wrong; or a superstitious worldview, in which conflict is the result of magic, unknowable forces. A neutral, "objective" approach to conflict assumes a certain neutral and "objective" view of the world. The collapse of the religious and moralistic worldview was a painful process that the West took centuries to pass through; it cannot be assumed that other cultures are at the same stage of advanced a-religiosity and a-morality.

The descent into psychology

In the nineteenth century, Nietzsche made it no longer possible to easily float religious, moralistic, or even historicist explanations of events. His grand nihilism reduced the world to the individual and his individual will. Furthermore, his attack on the idea that reason and morality are the fundamental guiding lights of the individual led to a revived interest in psychology. Freud's "discovery of the unconscious," followed by Skinner's behaviorism and other explanations of human motivation and action provided the intellectual tools for an entirely human explanation of human attitudes and behavior, downgrading religious, ideological, moralistic, and other explanations.

With regard to conflict resolution, this intellectual legacy of the modern West encourages it to perceive conflict as the result of the thoughts and impulses of the individual, the causes of which are largely within that individual. In other cultures that have not yet gone through this process of nihilism and psychologization it may be far more difficult to interpret conflict by reducing it to a set of perceptions, attitudes, and behavior patterns exhibited by autonomous individuals.

The convenience of Postmodernism

The Postmodern perspective that took hold of Western intellectual life after World War II downgrades systematic philosophies in favor of an attitude of vague relativism. Being right - indeed rights themselves - is a matter of perspective and may differ from culture or from individual to individual. Within their own contexts, more than one person or culture

(even at midnight on a deserted crossroads), etc. In the Western conflict resolution context, this usually means a relatively easy acceptance of the role of the anonymous moderator, facilitator, mediator, or other such central figures in the negotiation process; also it may facilitate an easy acceptance of freshly-devised rules to guide the negotiation process.

In other contexts, the attempt of an anonymous (i.e. non-traditional) moderator/facilitator to establish leadership and authority over a negotiation process may cause resentment and may become part of the problem in the form of a struggle for power between the moderator/facilitator and the various participants. The same may be true of new, non-legitimized negotiation rules and guidelines; the imposition of rules may in itself be resented and resisted as an imposition of inappropriate authority. It is in this context that the importance of a traditional authority figure as moderator/facilitator and traditionally accepted rules of conflict resolution become apparent.

Militarization, industrialization and the team player

The grand factories brought on by industrialization and the mass citizen armies inaugurated by Napoleon eventually brought the majority of the population in the West into large group enterprises. This continued in the twentieth century with the growth of bureaucracies and large corporations that employ the bulk of the new middle class. Through these formative experiences, many Westerners have internalized the benefits of team work and the costs of uncooperativeness or prisoner's-dilemma profiteering. In more fragmented societies organized around the family, the clan, or the small enterprise, the world appears far more competitive and large-scale team work has very few exemplars. Large-scale group work there may often be perceived as a formula for getting duped, and prisoner's-dilemma profiteering is often regarded as rewarding and rarely punished. As a result the seemingly natural appeal to "work together" (e.g. Moore 1986, 19) toward reaching an agreement does not resonate as positively elsewhere as it does in the West. Working together, as opposed to working separately, in other context may cause apprehension as control is cede to a group in whom the individual has little inherent trust.

Hobbes and the problem enforcing agreements

In the seventeenth century, Hobbes identified the difficulty of negotiating a social contract, or building trust, without a coercive power to enforce it; he argued that for parties to participate in negotiating an agreement without the guarantee that there will be a power to protect and enforce it would be irrational (Ebenstein 1969, 377). He also pointed out how dangerous it would be for parties to participate in such an agreement if the guarantee was not provide; it might even be worse than the state of nature in which you at least had a measure of freedom and

equality as protection. In the West, most people have had the guarantee of strong government and the rule of law for a number of centuries now.

In the Western conflict resolution literature, the final phases of negotiation, those of "working toward agreement," have a breezy relieved air to them, as if the most difficult and threatening part were over, and the parties would soon have an "agreement" on which they both could rely. In a political environment in which governmental authority is unstable and in which the rule of law is not necessarily paramount, moving toward "agreement," which is, after all, a situation of interdependence not only involving your adversary but also some external guarantor of the agreement, may be in itself disquieting. It implies a giving up of control and autonomy and a limiting of one's freedom of action on the shaky grounds that the adversary can be trusted to fulfill his part of the bargain and that the "system" will help protect his contract. But in the absence of an enforcer, it may be preferable to maintain a conflictual but known and predictable situation, than to try to construct a less conflictual but more interdependent and unpredictable one.

Locke and negotiating with have-nots

Another point to consider is that in developing societies, people are mostly concerned with getting things they do not presently have rather than protecting what they do have, John Locke's social contract, on which of Western liberalism is founded, was based on protecting what one has: life, liberty, and private property. It is a negotiation among haves for the protection and preservation of what they have. Western conflict resolution is not too far from this perspective, based as it is on some assumption that all parties to the conflict have something to lose, something to preserve, and something to gain. Negotiating with real have-nots who have nothing to lose nothing to preserve, and everything to gain, might be quite different. Negotiating and bargaining assumes that each party has some number of "chips" that they can trade and shuffle around with other to create a satisfactory resolution to some conflict; but what of the party who has no chips at all, and whose only option in an uneven negotiation situation is to seize the other party's (or parties') "chips"? Indeed, with some veiling sophistication, this is what Marxist revolutionism proposes. Thus, Western conflict resolution through negotiation in a society of haves and have-nots may prove problematic and, at times, impossible.

In closing

I hope that in the paragraphs above I have raised some worthwhile question about the philosophical, moral, psychological, and cultural framework from within which Western conflict resolution departs. It should be kept in mind that I am not

suggesting any judgments on Western or Arab cultures, but merely trying to underline the serious diversity that exist at the deepest levels of different cultural and social formations. Value judgments only make sense from within one culture framework or another.

Moreover, I have attempted to present a tentative critique of some hidden premises of Western conflict resolution and to point out a number of areas within Arab political culture in which modern Western assumptions relating to the theory and practice of conflict resolution do not fully apply. I have tried to indicate that some of the bases on which Western conflict resolution rest are not to be found, in exact mirror image, in the Arab world, nor perhaps in other cultures. The conclusion to be drawn from this is not that the Arab world, for example, is more conflict-prone or less conflict resolution-oriented than the West but that in transporting Western conflict resolution theories and techniques to the Arab world or elsewhere, they must undergo considerable cultural adaptation.

CITIZENS IN ACTION

Making Peace *in the* Post-Election Crisis in Kenya – 2008

By George Wachira

with Thomas Arendshorst and Simon M. Charles



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Concerned Citizens for Peace



NPI-Africa

A Peace Resource Organisation

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NPI-Africa

Founded in 1984 as Nairobi Peace Group, Nairobi Peace Initiative-Africa (NPI-Africa) has been involved in a wide range of peacebuilding initiatives in Africa. Its work has involved mediation and dialogue facilitation, training and capacity building, and healing and reconciliation initiatives in countries in East, Central and West Africa. NPI-Africa also undertakes research and documentation, seeks to influence policy in areas relevant to its mission, and promotes reflection and learning from peacebuilding practice.

During the 2008 post-election crisis in Kenya, NPI-Africa played a key role in the founding of CCP and provided the institutional framework for purposes of receiving and managing CCP funds.

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Foreword

by Amb. Bethuel A. Kiplagat¹

I am so happy that George Wachira has been able to put together the story of the Concerned Citizens for Peace – a spontaneous initiative by Kenyans who came out to save their country from self destruction. Violence erupted with the announcements of Presidential elections aggravated by the swearing in of President Kibaki. The violence and chaos that ensued took the country to the brink of destruction. The leadership in the country, whether political or religious was divided along ethnic lines and paralyzed. The leadership vacuum was palpable and the silence defining. People had lost hope. Without prior planning a core group of five got together at Serena Hotel to deliberate on what to do with the ever worsening situation the country was facing. First was to stop the violence and death of innocent Kenyans.

The core group of concerned citizen had no force, no organization and no money, but they discovered that they had other resources in abundance than these – they had commitment, hope and conviction that the problem the country was facing was their problem and therefore had an obligation to make their humble contribution to save the nation. They were surprised and overwhelmed when they made an appeal informing Kenyans of the daily meetings at Serena hotel on the situation of the country. The turnout was impressive. People from all walks of life turned up – the young and the old, the professors and the businessmen representing the Kenyan ethnic and racial mosaic. The meetings came out with ideas which were implemented.

¹ Amb. Kiplagat is currently the Chairman of Kenya's Truth Justice and Reconciliation Commission (TJRC). He was a co-founder and key member of CCP.

It is amazing that no one complained or asked for money or food. If anything, those who came sacrificed their time and resources. The spirit in that room was so touching and moving. I have never been through such a wonderful deep spiritual experience. What lessons can we learn from this?

First, Kenya and Africa does not lack resources. We have it in abundance – but it depends on what resources one is talking about; material we have, but that is not the kind or type that will take us far. The inexhaustible resources we have are of the spirit – say “yes I can and I will”. Did President Obama learn about this philosophy from Nairobi businessmen who decided to deal with problems facing the city rather than wait for the government.

The core group of Concerned Citizens for Peace, must have been guided by the principle of “taking ownership of one's problem” that is a philosophy which I believe is so fundamental for the solution of Africa's problem. I have even advocated that we should jealously guard our problems and never allow anybody to take them away from us. When a problem is yours, you will make every effort to find a solution, but when it belongs to someone else then it does not receive the attention it deserves. Is this why we are forever dependant especially on the western world to solve our problems.

The spirit that prevailed during the crisis should be natured and shared more widely, because that is what will take us far on the road to peace, stability and development.

Nairobi, January 2010

Preface

The writing of ‘the CCP Story’ has been underway for more than a year competing with other priorities. The Concerned Citizens for Peace (CCP) was born of necessity: various individuals from different backgrounds came together to respond to the violence that was engulfing Kenya following the dispute over the December 2007 presidential vote. As the immediate crisis receded, the majority of these people returned to their everyday work and responsibilities. During the crisis, the work of CCP captured much local and international attention, thus creating an interest for the story to be shared in some form. The CCP story is a story of collaborative initiative which must be told and understood from many angles and perspectives.

In preliminary fashion, this document recounts the launch and the subsequent activities undertaken by the CCP in response to Kenya’s post- election upheaval in early 2008. Presented here in story form, it is to be considered, firstly, a ‘work in progress’ and, secondly, an ‘invitation’ to participants in and observers of the CCP process to submit additional stories, impressions, activities, and analysis as part of an open-ended chronicle of Kenya’s 2008 post election crisis experience.

As a co-founder and member of the CCP Core Team, I am privileged to be identified with the CCP story. I acknowledge from the outset that it has been particularly challenging to serve both as author and informant in a story with which I was intimately involved. For this reason, it has been helpful

to work collaboratively with co-authors Simon Charles² and Tom Arendshorst³.

The beginnings of this document can be traced to in-depth interviews with more than twenty key CCP participants. These interviews were conducted between March and June of 2009 by Mr. Simon Charles, an intern at the time with NPI-Africa. On the basis of the interview data and other relevant documentation, Simon and I then produced a massive and quite detailed draft document before Simon completed his internship with NPI-Africa. The draft clearly needed more work to make it ‘readable’. It remained in its initial form, however, until December 2009 when I had the opportunity to resume work on it. By that time, interest in the story had grown very considerably, particularly in international civil society peacebuilding circles. During this second phase, I teamed up with Tom Arendshorst to produce a shorter version of the initial draft. Tom’s additional interviews with me yielded information to fill some of the obvious gaps in the story.

This document narrates a story, rather than offering a detailed analysis of the respective elements. Near the end of the document, there is a preliminary distillation of lessons

2 Simon Charles is a law student at the University of British Columbia in Vancouver, Canada. He spent seven months as an intern at NPI-Africa in 2008 and 2009, part of which coincided with the first anniversary of the Kenya Post-Election Crisis and the National Peace and Reconciliation Accord. During this period, he was involved in some of the CCP activities, including interviewing CCP members.

3 An ophthalmologist by training, Thomas Arendshorst earned his M.A. in International Peace Studies at the Kroc Institute, University of Notre Dame, in 2006. In 2005, he served as a research and documentation associate at NPI-Africa. He lives in Michigan, in the United States, where he is a justice and peace advocate, and writer.

learnt. In later documentation, specific elements of the story such as the respective roles of the media, the Concerned Kenyan Writers, Concerned Youth for Peace, the initiative with church leaders in the Rift valley, and the private sector, among others, will hopefully be analysed in greater detail.

It is important to emphasize and appreciate that while five individuals initially launched the CCP, its success must be attributed to the corps of creative Kenyans who responded to CCP's call for help to save the country. That small band of people presented itself at the Serena Hotel and proceeded to build a coordinated approach to the resolution of the crisis; they carried out activities agreed upon during the daily Open Forum and returned on following days to report and take on more responsibilities. Some contributed material resources, while others drafted documents, wrote reports and several even offered psycho-social support when it was needed. While select CCP members were interviewed for this paper and are therefore referred to in the document, many others remain silent. All the people who gave of their time, their creativity, their energy and resources to the work of CCP are the true heroes of the story.

We would like to thank the Global Partnership for the Prevention of Armed Conflict (GPPAC) for supporting the publication of this document. In particular, we would like to thank the GPPAC's Honorary Chair, Paul van Tongeren, and Executive Director Peter van Tuijl, for taking a keen interest in the CCP story. Special appreciation goes to Paul for his early conviction that the story ought to be written and shared, and also for his insistence on it.

Hans van de Veen and NPI-Africa board member, Harold Miller, have assisted with the editing of this document. Hal Culbertson, John Paul Lederach and Kabiru Kinyanjui read

the original, longer draft and offered helpful comments, as did colleagues at NPI-Africa, particularly Florence Mpaayei and Naana Marekia. The final work on this document was undertaken while I was a visiting fellow at the Kroc Institute for International Peace Studies, University of Notre Dame, in Indiana, USA, in the Fall of 2009. I thank the Kroc Institute for the space accorded to work on this document.

George Wachira⁴

NPI-Africa

January 2010

⁴ George Wachira is Senior Research and Policy Advisor at NPI-Africa. He was among the founders of Concerned Citizens for Peace.

Summary

It is the purpose of this paper to present in some detail the story of a Kenyan citizen diplomacy group, the Concerned Citizens for Peace (CCP). In the aftermath of the post-election crisis in early 2008, CCP's interventions helped to rally the country toward dialogue and negotiations, thus serving as a precursor to the formal mediation process that followed.

Taking a largely story-telling approach, it describes the beginnings of CCP, its early interventions, the key activities undertaken, and the interface with the formal mediation process while sustaining an open and inclusive public forum to help resolve the crisis. It presents and discusses the lessons of this experience and the possible implications for peace activists facing future outbreaks of violence in Kenya or elsewhere in the world.

Concerned Citizens for Peace was launched on December 31, 2007 by five prominent Kenyan civil society peace workers and mediators and immediately emerged as a rallying point for national peace and dialogue. At a time when the country was paralysed and shocked by violence, CCP occupied a crucial space, recognising at that early stage that dialogue was the only way out of the crisis. The initial focus was to plead publicly and privately with the political leadership to dialogue, while calling upon Kenyans to stop the violence and wanton destruction of property.

At the launch of CCP, the initiators called on Kenyans to join and to contribute their thoughts, abilities, and connections toward a resolution of the crisis. In a matter of days, different

Working Committees were formed, while 'Concern' became a brand name used by other affiliates of CCP (Concerned Writers of Kenya, Concerned Women, Concerned Youth for Peace, etc.). In the first month of the crisis, the *Open Forum* of CCP became the place where Kenyans of all walks of life came together to reflect, analyse, strategise and act jointly for several hours every day. These reflections formed the basis of the *Citizens Agenda for Peace* launched on January 9, 2008. This document became a major ingredient to the formal mediation process.

CCP helped set the pace for the international mediation process by initiating the visit of Archbishop Desmond Tutu, by briefing the Eminent Persons, and by interacting with the Kofi Annan process. The hotel which served as the CCP base also served as the venue for the formal mediation process led by the former UN secretary-general, creating a strategic entry point for CCP.

At a point when violent rioting threatened to engulf the capital city of Nairobi, CCP worked with the Internal Security Ministry to mobilize peacekeeping in the city. This collaboration led to the formation of the Nairobi Peace Forum, the formation of District Peace Committees, and various training and capacity-building activities. As the schools and universities prepared to re-open, CCP held consultations with the Ministry of Education, spoke to a national gathering of school heads, met with vice-chancellors of all public universities, and organized a workshop for student political leaders. In apparent direct

consequence, violence did not break out in the universities, as had been feared.

The connectivity generated in the Open Forum enabled CCP to intervene at multiple levels. CCP mobilized the public to stop the violence while also urging politicians at all levels to resolve the crisis through dialogue; it engaged with the formal mediation process from the very beginning; it worked with public institutions to prevent the spread of the violence; it worked strategically with the media (television, print, radio, electronic, blogs, and SMS); it worked collaboratively with the private business sector; it supported local-level actions by key individuals and groups to avert and respond to the violence; and it offered practical support for mourning, confidence-building and healing. Working at all levels of Kenyan society, CCP also worked across lines of tribe, ethnicity and religion.

The initiative of the Concerned Citizens for Peace is an inspiring example in terms of its speed and timeliness; its mobilisation of a large peace constituency; its deployment of strategic, multi-level and multi-sector actions and linkages; its use of strategic analysis; and its interfacing between civil society and the formal mediation process.

A crisis response such as the one undertaken by the CCP emanates from a deeply held urge to mitigate and manage the immediate violence, fully aware of the inability to deal immediately or conclusively with the underlying issues inherited from history. Nevertheless, without intervention, Kenya's violence could have deteriorated into total collapse. The possibility or likelihood of then addressing the issues bequeathed by history could have been overwhelmed by dynamics of the moment. Interventions such as CCP's are therefore important as part of an 'enabling environment' within which to resist self-destruction and to re-focus on the identification and resolution of problems.

Certainly, select elements of the CCP response in Kenya were unique and unlikely to be replicated elsewhere. Nevertheless, some of the CCP strengths and decisions that resulted in peacebuilding successes for Kenya are replicable and may provide inspiration for further innovative peacebuilding work in the future.

Learning Points

Recognition of the moment

An ability to recognize that Kenya had arrived at a moment of extreme danger sprang from the confluence of long experience, imbibed theory and well honed intuition. CCP was driven by a sense of urgency to mobilize swiftly and to take bold action in the hours immediately before and after the announcement of the contentious election results. The CCP recognized immediately that external intervention would be necessary to address the divisions in the country.

Compass orientation

Without a sharply-defined mission, even great energy and expertise is ineffective. CCP founders and members cared as much for 'truth' and 'justice' as everybody else, but they were convinced that Kenya's immediate need was for the termination of violence and that respectful dialogue was the key to open the possibility for truth and justice.

Years of preparation

Long-term development and preparation form a significant portion of the capacity for rapid, effective crisis response. Capacity-building, in the form of training for conflict resolution, mediation, and peacebuilding, can empower the broader civil society for purposes of averting violence and contributing to the restoration of violated peace.

Inclusive web of improbable, strategic actors

Inclusive participation, transparency, and an appeal to the better instincts of people trumped the option of exclusion and the 'control' of closed doors. A 'closed-door' initiative would have stymied the emergence of the movement that CCP became, with its ability to forge and to create new webs from existing ones. Particularly critical to the CCP's non-diplomatic initiatives were its relationships with the media.

Movement-process/organization-structure

CCP envisioned itself more as a movement and as a process, and less as an organization or structure. This self-perception enabled it to function in a fluid and inclusive manner. There were several discussions within the group regarding minimum organization that would have enabled CCP to solicit and receive funding; but there was reluctance among the founders to turn CCP into an organization. A crisis of longer duration would definitely have required careful balancing between the movement-process and organization-structure options.

Focus on multiple levels and actors

The connectivity generated in the Open Forum enabled CCP to intervene at multiple levels of the Kenyan society, bridging the lines of tribe, ethnicity and religion.

Use of strategic analysis

The broad web of people involved in CCP provided conflict and political analysis which helped to formulate strategies, to anticipate not-yet-developed hotspots of violence, and to re-focus strategy when necessary in response to shifting realities. Its web of information sources enabled CCP's strategic analysis to be comprehensive, and to address multiple situations simultaneously. Excellent information and analysis enabled the group to reach early conclusions about possible resolution of the crisis.

Providing space and opportunity for peace

The CCP experience suggests that in conditions of chaos and crisis, people need space and time to think and act together. In the midst of violent conflict, space for community initiative and leadership must be created; once such space is recognized and available, synergistic networks and unexpected contributions to the peace effort become possible. The worst injustices and violations of human rights take place in an environment of chaos and violence.

Integration with the official mediation

CCP's easy, continuing access to and cooperative working relationship with mediator Kofi Annan and his team served as unusual assets to this non-governmental group of peace activists. CCP's integration into the formal peace process grew from prior connections between Annan and three of the five CCP founders. In consequence, the CCP was consulted by the formal mediation team on various issues, and helped insure that the eventual National Accord incorporated strong relevance to the specifics of the Kenyan conflict.

The grasp of serendipitous opportunities

The readiness and the wisdom to grasp serendipitous opportunities required thorough analytic preparedness, a sense of the future, and the instantaneous recognition of an opportune moment. To respond to serendipitous opportunity requires the ability to envision outcomes for which the paths are not yet clear or available. The readiness to grasp serendipitous opportunities also rises from the wisdom to patiently trust the process-nature of peacebuilding, rather than attempting to control all events.

Strategic location

The Serena Hotel served, serendipitously, as a strategic base for CCP initiatives. The Serena was critical for those who needed a base, secluded from the reigning chaos in the surrounding city.

Preventive action

At a point when violent rioting threatened to engulf the capital city of Nairobi, CCP worked with the Internal Security Ministry to mobilize peacekeeping in the city. This collaboration led to the formation of the Nairobi Peace Forum; the formation of District Peace Committees; and various training and capacity-building activities. Two intense meetings with ethno-vernacular FM radio station owners and presenters were held, urging them to use their radio broadcasts as tools for peace rather than as firebrands for violence.

Leadership and ‘anchor’ personalities

The situation required that several individuals step forward, initially, to form and mobilize a movement, a corps of peacebuilders. Without that initial leadership, the CCP movement would probably not have been formed, and the actors would have remained isolated. Without the response of the corps of peace-minded actors, the five initiators would have remained isolated and ineffective.

CCP’s success can also be explained by its ‘anchor personalities’ who became part of the easily recognisable CCP brand. Each time they appeared in the media they were associated with ‘peace’ and ‘dialogue’. Such anchor personalities can help focus an initiative and build the ‘recognizable identity’ of its message.

Introduction

“Across Africa, we have seen countless examples of people taking control of their destiny and making change from the bottom up. We saw it in Kenya, where civil society and business came together to stop post-election violence.”

U.S. President Barack Obama, speaking in Accra, Ghana, July 10, 2009

For nearly two months at the beginning of 2008, Kenya teetered on the brink of a cataclysmic disintegration. Following the announcement of the contested presidential election results on December 30, 2007, the country exploded into unprecedented and widespread violence. Attacks and counter-attacks quickly escalated, taking on an ethnic character camouflaged under a façade of presumed political affiliation. The violence quickly evolved from its initial apparent spontaneity to well-orchestrated attacks and counter-attacks involving massacres, arson, looting, rape, evictions and dispossession. The response by the police force added to the violence and deaths. In less than two months of violence, more than 1,300 people lost their lives – almost half of that number within the first two weeks of the violence – while more than 500,000 people were displaced from their homes. The crisis led quickly to the collapse of law and order, threatening Kenya’s very survival as a nation. According to international media coverage, another African country had followed a familiar, if inglorious path.

Kenya was eventually saved in what was, some observers would say, an astonishingly short period of time. Well-coordinated official mediation by the African Union’s Panel of Eminent Personalities, led by former UN Secretary-General Dr. Kofi Annan, culminated in the National Peace and Reconciliation Accord signed on February 28, 2008 after five weeks of marathon negotiations. This agreement paved the way for a power-sharing Grand Coalition Government

incorporating the two former political antagonists, President Mwai Kibaki heading the Party of National Unity (PNU) and the Honourable Raila Odinga, now Prime Minister, leading the Orange Democratic Movement (ODM).

The negotiation process, led by Annan, was remarkable for its ability to rally and focus both local and international support toward a timely resolution of the immediate crisis. The conduct and management of that process in itself offers useful lessons in crisis intervention and will no doubt be the subject of analyses by scholars in the future. Less well-known are the initiatives undertaken by many civil society groups, individuals, media personalities, artistes, business and religious leaders in an effort to end the violence, sometimes working collaboratively, sometimes separately, sometimes in creative tension.

It is the purpose of this paper to present in some detail the story of a citizen diplomacy group, the Concerned Citizens for Peace (CCP), whose initiatives helped to rally the country toward dialogue and negotiations, thus serving as a precursor to the formal mediation process that followed. Within a period of less than twenty-four hours after the announcement of the contested results and the ensuing violent explosion across the land, five Kenyan citizens – a seasoned diplomat, two professional peacebuilders, and two retired generals, all experienced peacemakers – led a cadre of Kenyan peacemakers from a national leadership void into decisive action.

These five citizens moved into action on December 31, 2007 and quickly became the Core Team of a movement known as the CCP. Working both publicly and behind the scenes, CCP mobilized peace-minded volunteers and professionals from a wide spectrum of Kenyan society into a peacebuilding web that effectively countered the extreme prevailing violence. In direct and indirect ways, the actions

of CCP led into the international mediation process, culminating in the National Peace and Reconciliation Accord signed on February 28, 2008.

Which elements, which values, which dynamics trigger responses by a citizen group in time of crisis? What is the nature of 'preparedness' for helpful action in an unanticipated crisis? While the answers are not perfectly clear in this initial reflection, CCP's action as a conflict crisis response stands out on several counts.

There was the element of alacrity; within a matter of hours after the onset of the violence, the core team had mobilized into action. This early engagement in the form of televised appeals for peace and dialogue was critical at a time when the country appeared to be on the edge of complete collapse.

The CCP was able to draw on the expertise of experienced peaceworkers who engaged immediately with entry points to the crisis.

CCP mobilized a web of actors, all of whom were committed to non-violent negotiation as a means of resolving the crisis. Included in this web were media people, business people, professional cadres, political analysts, young people, writers, university vice-chancellors, student leaders, government officials, religious leaders and politicians. This web of actors – cutting across professional, religious and political affiliations – served, collectively, as a major resource to the CCP crisis response.

CCP quickly established an open and inclusive public posture, inviting any willing Kenyan to participate in its activities while at the same time carrying out quiet and confidential diplomatic work. Within record time, a wide range of action ideas were generated during the daily public forum and matched with flexible resources comprising funds and volunteer time.

The CCP, through its High Level Dialogue Committee and Technical Committee, forged a vital link with the official mediation process led by Kofi Annan, offering observations, guidance and comment as requested.

The choice, right from the beginning, of the Serena Hotel as the CCP operational base proved to be a strategic godsend. Later the negotiation process led by Annan was also lodged in the Serena Hotel. This common venue offered opportunities for strategic and serendipitous encounters with a broad spectrum of actors critical to the peace effort.

This paper presents the work of CCP and the lessons that can be drawn from it. Deploying a largely story-telling approach, it describes the beginnings of CCP, its early interventions, the key activities undertaken, and its interface with the formal mediation process while sustaining an open and inclusive public forum to help resolve the crisis. It presents and discusses the lessons of this experience and the possible implications for peace activists facing future outbreaks of violence in Kenya or elsewhere in the world.

The primary reading audience for this paper is the corps of peace workers who may be interested in lessons regarding quick response to conflict situations. The authors hope that the story will serve as a model and provide insights that may empower future non-governmental efforts to prevent and curtail politico-ethnic violence in similar situations. In particular, it is hoped that the CCP story will contribute to a vigorous debate on the role of citizens' or civil society diplomacy in the resolution of ethno-political crises.

The Kenyan Post-Election Violence, 2007-8

The Onset of the Crisis

On December 27, 2007 Kenya conducted its national Presidential and Parliamentary elections. The voting process was accomplished without incident, but only to a degree. Elections had been preceded by a high-stakes electioneering period marked, on the one hand, by the slickest, most expensive, and perhaps the most exciting political campaign in Kenya's history. Had the elections been concluded without incident, the country and the world would most likely have considered them as the coming of age of professional political campaigning and democracy in Kenya.

In reality, any expectation of free and fair elections in Kenya served merely as testimony to the facile understanding of the phrase. Campaigning had been marked by a siege mentality and by a sense of grudge, infused and mobilized by dangerously raw ethnic sentiments. Mwai Kibaki and Raila Odinga, the two leading presidential candidates, had been allies in the successful defeat of the then ruling party in the 2002 elections at which time Mwai Kibaki had been elected President. Soon after the elections, this alliance dissolved into an acrimonious split within the government and within the country, a split which persisted to the electoral crisis of 2007.

In reality, any expectation of free and fair elections in Kenya served merely as testimony to the facile understanding of the phrase.

Final days in the respective campaigns were marked by accusations and counter-accusations of planned rigging, raising tensions around the country and triggering isolated incidents of violence and killing.

During the constitutional referendum of November 2005, Kibaki and Odinga had campaigned on opposing sides, with the latter taking charge of the eventually triumphant “No” campaign while still serving in the divided government. Kibaki’s sacking of Odinga and his allies from government after the referendum defeat gave birth to Odinga’s party active in the December 2007 elections, the Orange Democratic Movement (ODM). Kibaki therefore completed his first term with a hobbled government and a disintegrating political party. Two months prior to the 2007 elections, he scrambled to form a new electoral vehicle, the Party of National Unity (PNU). Thus was the stage set for the epic do-or-die battle culminating in the General Elections of December 2007.

In the months and weeks before voting day, opinion polls favoured Odinga and his ODM; naturally ODM supporters were expecting Odinga to win the presidency. As December 27 approached, the polls indicated that Kibaki was closing the gap and that the outcome was too close to call. Final days in the respective campaigns were marked by accusations and counter-accusations of planned rigging, raising tensions around the country and triggering isolated incidents of violence and killing.

While the parliamentary results were announced within reasonable time, giving ODM a clear majority,⁵ the presidential results were slow in coming. Early results indicated that Odinga was enjoying a comfortable lead. However, as the results trickled in, Odinga’s lead was quickly eroded and then eliminated entirely when results from Kibaki’s stronghold constituencies were announced. By December 29, tension

⁵ Whether this clear parliamentary majority can be uncritically interpreted to necessarily mean a corresponding presidential vote majority has been the subject of debate. See, for example, the *Report of the Independent Review Commission on the General Elections Held in Kenya on 27th December, 2007*, 17th September 2008.

and anxiety in the country gave way to violence. Finally, in the afternoon of December 30, the Electoral Commission of Kenya announced that Kibaki had won the contest for the presidency. Adding legal weight to the announcement, the Kibaki camp moved swiftly to a swearing-in ceremony which took place within an hour after the final announcement of the election victory. According to Kenyan law, once the President is sworn into office, the legitimacy of his or her election can be contested only through the courts.

Violence and Consequences

Within hours after the announcement of election results and the hasty swearing-in of Kibaki, Kenya erupted into an orgy of unprecedented violence, prolonged, eventually, over the following two months. Initially the attacks were directed against supporters of Kibaki, based on ethnic identity and political affiliation. In the days following, random riots, looting, arson, rape and murder spread to various parts of the country, escalating into coordinated attacks and counter-attacks. Massacres took place in Eldoret, Nakuru, Naivasha, Nairobi and in Kisumu, with police killings adding to the death toll. Farmlands in Rift Valley Province, cities and towns of western Kenya, and the densely populated and low-income sub-locations of Nairobi and Kisumu were turned into killing fields. Nor were government officials spared. More than 1,300 Kenyans were killed within a matter of weeks. Another 500,000 Kenyans were on the move, displaced from their farms and homes both in rural and urban centres, with some electing to cross the border into Uganda. Business premises and homes in both urban and rural areas were looted and set on fire. Fire served as a devastatingly effective weapon of choice. Allegations of ‘ethnic cleansing’ and ‘genocide’ began to attract international attention. The country was deeply divided and at great risk of a chaotic disintegration as law

Massacres took place in Eldoret, Nakuru, Naivasha, Nairobi and in Kisumu, with police killings adding to the death toll.

and order collapsed. Total civil war was averted, it seems, only because security forces kept their distance.

Vital rail and road links were severed, paralyzing transport in most of Kenya west of Nairobi; links with the neighbouring countries of Burundi, the Democratic Republic of the Congo (DRC), Rwanda, Sudan and Uganda were also cut.

The disputed elections resulted in a complete vacuum of leadership and power; no one, it appeared, was in charge of Kenya. Cloistered in State House, the newly sworn-in president was apparently paralyzed by his pyrrhic victory, apparently unable to exercise authority. Aggrieved losers in the elections tried to press their opponents through mass mobilization and demonstrations. They, however, had no way of managing the mayhem, and the line between political protest and criminal activity was quickly lost. Meanwhile, lieutenants of the two leaders used local and international media facilities to declare their positions and further stoke the prevailing anger. At a time when selfless, courageous and decisive leadership should have been exercised, it was totally absent. Kenya's very survival was seriously threatened. A country with a record for brokering peace in the region was itself now headed for total collapse.

Aggrieved losers in the elections tried to press their opponents through mass mobilization and demonstrations.

The Beginnings of the Concerned Citizens for Peace

Emergence

CCP was officially launched by five peacemakers⁶ at a media conference held on December 31, 2007, just a day after the onset of the violence following the announcement of the contested presidential election results. The five initiators immediately established an operational base in Nairobi's Serena Hotel where they were joined in the following days by a corps of Kenya's peacebuilding community, including professionals, religious leaders and community organizers. For the next three months, the hotel became synonymous with efforts to save Kenya as it was

⁶ The five founders were: 1. Dekha Ibrahim Abdi, an experienced peacebuilding trainer and mediator and founding member of the Wajir Peace and Development Committee, the Coalition for Peace in Africa, and ACTION (Action for Conflict Transformation). She is the 2007 winner of the Rights Livelihood Award ("The Alternative Nobel Peace Prize"); 2. Amb. Bethuel Kiplagat, a renown diplomat, is the Executive Director of African Peace Forum, former Kenyan Ambassador to France and the United Kingdom, former Permanent Secretary of the Ministry of Foreign Affairs of Kenya, Chair of the African Union's NEPAD Africa Peer Review Mechanism, chief mediator for Somalia and recently appointed the Chairman of Kenya's Truth, Justice, and Reconciliation Commission; 3. General (Retired) Daniel Opande, a veteran of UN Peacekeeping in Namibia, Mozambique, Sierra Leone, and Liberia, serving as Facilitator and Mediator in Mozambique, Chief Military Observer in Liberia, and Force Commander in Sierra Leone; 4. General (Retired) Lazaro Sumbeiywo is former Chief of Staff of the Kenyan Army, Chief Mediator for Sudan leading to the Comprehensive Peace Agreement, and is current advisor to the United Nations on the DRC peace process; and 5. George Wachira, Senior Research and Policy Advisor and former Executive Director of Nairobi Peace Initiative-Africa (NPI-Africa) with eighteen years of peacebuilding experience in conflict settings in East, West, and Central African countries. The founding group therefore represented a combined compliment of unique multi-level skills, experiences and approaches to conflict and crises. Some of them had worked together before and knew each other well, while others did not. Kiplagat was the common factor in the group.

Gitahi immediately arranged for Kiplagat and Wachira to appear live on NTV that very evening, where the two discussed the rising tension with news anchor Julie Gichuru and appealed for calm and patience as the country awaited the announcement of the election results.

chosen to host the official mediation process led by former UN Secretary General, Kofi Annan.

For George Wachira, the CCP story began on the afternoon of December 29, before the election results were announced. As George was driving from his home to a near-by shopping area with his three-year-old son, his car was attacked by an agitated mob, ostensibly protesting the delayed announcement of the election results. Wachira and his son managed to escape, shaken but unhurt, from the furore of the mob. George's peacemaking instincts were immediately awakened to the urgency of the situation. Acting on this flash insight, he abandoned his shopping mission, returned home whence he telephoned NPI-Africa peacebuilding colleagues, Dr. Kabiru Kinyanjui⁷ and Florence Mpaayei⁸ as well as Ambassador Betheul Kiplagat of the African Peace Forum.

In the event, Kiplagat had already begun conversations on his own initiative. He was already in the company of Linus Gitahi, CEO of the Nation Media Group (NMG), owners of the Daily Nation (the largest daily newspaper circulating in East and Central Africa) and Nation Television (NTV). Gitahi immediately arranged for Kiplagat and Wachira to appear live on NTV⁹ that very evening, where the two discussed the rising tension with news anchor Julie Gichuru and appealed for calm and patience as the country awaited the announcement of the election results. Their television appearance was interspersed with updates on the election results as well as flashes of chaotic scenes from the Election Commission of Kenya (ECK)'s coordination centre where representatives of the respective

⁷ Kinyanjui is a Kenyan education and development specialist, chairperson and founder member of NPI-Africa. Kinyanjui went on to play important behind-the-scenes roles, making national and international contacts and occasionally participating in CCP initiatives.

⁸ Florence Mpaayei is executive director of NPI-Africa.

⁹ Kiplagat had requested Francis Nguli, head of Peace Net Kenya, to join the team at NTV, but the latter could not make it.

political parties disputed incoming results. The two were in the NTV studios at the critical moment when Kibaki's election tally tied and then overtook Odinga's election tally. The next day General Lazarus Sumbeiywo appeared on NTV, urging peaceful restraint.

On the evening of December 30, following the swearing-in ceremony of President Kibaki and the ensuing eruption of violence, Kiplagat hosted at his home an 'elders of Kenya' meeting, including NMG's Gitahi. It was decided at the meeting that prominent non-political leaders be urged to stem the crisis by all means, including immediate contact with politician friends. On the same day, Kiplagat and Wachira talked and agreed to meet at the Serena Hotel on the following morning. Kiplagat had also communicated, meanwhile, with Generals Lazaro Sumbeiywo and Daniel Opande requesting their presence at Serena Hotel. At the time, Opande was in the western Kenya town of Eldoret which was rapidly becoming the epicentre of violence in the Rift Valley Province.¹⁰ He had been monitoring events in the region and was alarmed by what he was hearing. Opande was already sheltering terrified residents in his home compound who were trying to evade their attackers. He had also, meanwhile, contacted General Sumbeiywo and the two had begun to explore what they could do together.¹¹

With the country burning, these four people met at the Serena Hotel on the morning of December 31, to share analysis and to agree on appropriate action. Later that day, at the urging of NMG's Gitahi and the Serena Hotel's Francis Okello, the four addressed a well-attended media conference, introducing themselves as 'Concerned Citizens for Peace' (CCP). Each of the four appealed to Kenyans

¹⁰ It is in Eldoret's Kiambaa area that, on January 1, 2008, 35 people were burnt in a church where they had sought refuge.

¹¹ Lt. General Daniel Opande, Interview, Serena Hotel, Nairobi, June 8, 2009.

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to refrain from destroying their country, and appealed to Kenya's leaders to resolve any disputes through dialogue.

At the same time, the four invited other Kenyans with skills and experience in peacemaking and dialogue to join the group. Kiplagat and Wachira directed a very specific invitation to Ms. Dekha Ibrahim Abdi, an experienced peacemaker, who immediately agreed to fly from her Mombasa base to join the group on January 1, 2008. These five – Ibrahim, Kiplagat, Opande, Sumbeiywo and Wachira – became the Core Team of the CCP initiative. Immediately after her arrival at the Serena Hotel, Ms Ibrahim was chosen to serve as the group's leader with the designated title, Convener.¹²

Before leaving his home on the morning of December 31, Wachira had telephoned the Rev. Dr. Mvume Dandalla¹³, the incumbent General Secretary of the Nairobi-based All-Africa Conference of Churches (AACC), seeking his support in the mobilization of the Christian ecumenical community, and in particular, seeking contact with Archbishop Desmond Tutu. Rev. Dandalla, on Christmas vacation in his native South Africa at the time, agreed to follow through on the request. Dr. Kinyanjui of NPI-Africa continued contact with Dandalla in South Africa and additionally made contact with the Rev.

¹² In terms of the ethno-political geography of Kenya and the conflict itself, Ibrahim comes from 'periphery Kenya' – unlike the other members of the team who come from communities that were seen to be the key 'contestants' in the electoral dispute. The 'periphery Kenya' she comes from had for years experienced devastating conflict while being governed under a state of emergency imposed since 1967. Much of this violence in her North-Eastern Kenya region (driven by both government security agents, local clan militias and fuelled by dynamics in neighbouring Somalia) went unnoticed by 'mainstream Kenya' due to the remoteness of the 'periphery'. Ibrahim honed her peacemaking skills working on the conflicts, helping to build a pioneering peace infrastructure that involved elders, women, security agents, the provincial administration, and the youth. This North-Eastern Kenya region now watched in disbelief as the roles changed: the region remained peaceful and even offered refuge to people escaping the violence.

¹³ Dandalla was to later leave the AACC in December 2008, and ran for the South African presidency in the April 2009 elections on the Congress of the People (COPE) party ticket. In 2005-06, Dandalla, Kinyanjui, Kiplagat and Wachira, among others, had worked together on a nascent initiative on Zimbabwe.

Dr. Samuel Kobia,¹⁴ General Secretary of the World Council of Churches (WCC) in Geneva, Switzerland. Kobia facilitated contact with several key international leaders, seeking their intervention on the situation in Kenya. Thus within twenty four hours after the eruption of post election violence, a community of key peace advocates within Kenya and abroad had formed collaborative links and had begun laying foundations for concerted national and international response to Kenya's crisis.

Initial Infrastructure and Organization

Even as the CCP Core Team was forming, its initiators had already engaged three pivotal infrastructural assets that would greatly assist the group's work. Firstly, they had forged a working partnership with the media and in particular with Linus Gitahi, the head of the Nation Media Group (NMG).¹⁵ On December 31, Gitahi urged the CCP founders to speak to the country: 'You are the peacemakers; we need you to save the country.' The launch of the CCP was thus well publicized by the media. Secondly, NMG arranged and paid for the initial costs of a meeting room at the Serena Hotel,¹⁶ a room which became CCP's base in the following weeks.

¹⁴ Kobia was until August 2009 the General Secretary of the World Council of Churches and distinguished ecumenical diplomat, and also a co-founder of NPI-Africa.

¹⁵ Working with the media for members of this group dated further back, however. Both the Africa Peace Forum and NPI-Africa (Kiplagat's and Wachira's employers, respectively) had teamed together every election year since 2001, under the banner Partnership for Peace (PfP), their collaborative brainchild. In the runner-up to the 2007, an expanded PfP had worked with the media, sponsoring a team of journalists for a trip to Rwanda to learn about the negative roles that the media played in that country's genocidal violence.

¹⁶ In subsequent days and weeks, others stepped in to pay for the room at the Serena. These included some of the eventual CCP members who participated in the Open Forum; NPI-Africa, Oxfam GB, IDRC, United States Institute for Peace, among others. On occasion, CCP Core Team members used their own money. At times when specialised meetings needed to be held elsewhere, members (e.g. Jane Katuga, Njeri Karuru) offered their homes as meeting places.

Thus within twenty four hours after the eruption of post election violence, a community of key peace advocates within Kenya and abroad had formed collaborative links and had begun laying foundations for concerted national and international response to Kenya's crisis.

Later, the negotiation process led by Kofi Annan took shape in an adjacent hotel room. The hotel's strategic and accessible location proved to be major assets. Additionally, the hotel was frequented by government officials, members of the opposition, members of the diplomatic community, high-level guests and the international media corps, thus offering opportunities for contacts, meetings, consultations and coordinated peace initiatives. Thirdly, following an appeal for support by the CCP founder members during the initial media conference, a broad range of people appeared at the Serena Hotel, offering their time and skills, thus serving as key assets to the work of CCP.

Organization and Initiatives

The Open Forum: Inviting Kenyans' Contribution to Peace

In its initial media appearances, the CCP Core Team appealed to all Kenyans to halt the violence and to refrain from the destruction of property; they called for calm, for peace and for dialogue throughout the country. In their media appearances, team members cited experiences of conflict in other African countries Africa and admonished Kenyans to avoid a replication of those disastrous precedents. Team members urged Kenya's national political leaders to meet and to engage with each other in the quest for a peaceful way forward.

In a bold, but potentially risky move at the initial press conference convened on December 31, 2007, the CCP founders invited anyone interested in peace and in saving Kenya to come to the Serena Hotel and join the group. With this invitation, the CCP team signalled its commitment to openness and inclusive participation. John Paul Lederach has suggested that '[peacebuilders should seek] ways to connect and mobilize the complex web of social and relational histories embedded in the context of the conflict.'¹⁷

¹⁷ Lederach, *The Moral Imagination* (2005).

As the committees developed, the CCP Core Team, functioning as the High-level Dialogue Committee and in concert with the Technical Team, was able to concentrate on analysis, strategy building, personal contacts with pivotal actors, and general coordination of diverse initiatives.

As a result of this appeal to the Kenyan public, the “The Open Forum” was born; beginning January 1, it met every morning during the following weeks at 8:00 a.m. The Open Forum became the meeting place for members of the peacebuilding community, leaders of civil society groups, representatives of the private sector, reporters from the media, social analysts, politicians and professionals from a variety of disciplines, all expressing their concerns and all seeking to be helpful. After some semblance of normalcy and routine had returned to the country, the morning meetings were reduced to three times weekly and then once weekly.

As the Open Forum attracted more and more people, a sense of organization quickly emerged, with the participants grouping around five working committees, respectively focused on: Humanitarian Response; Media; Community Mobilization; Resource Mobilization; Technical; and High-Level Dialogue. Committee members assumed responsibility to harvest ideas and suggestions from the people gathered daily at the Forum, helping to translate effusive discussions into focused action. As the committees developed, the CCP Core Team, functioning as the High-level Dialogue Committee and in concert with the Technical Team, was able to concentrate on analysis, strategy building, personal contacts with pivotal actors, and general coordination of diverse initiatives.

From the beginning it was understood that CCP was not an organization, but a forum or a movement. Participants who proposed specific initiatives were expected to own their proposals and to serve as implementers as well, with the respective Forum committees assisting with coordination and focus. Results from action suggested and implemented through the Forum were reported in subsequent meetings with alacrity. Following this simple format, CCP’s Open Forum stimulated action at grass-root and at diplomatic levels, responding quickly to shifting nuances and emergencies.

CCP also attracted the contribution of peaceworkers from other parts of the world. Dekha Ibrahim remembers that a peaceworker colleague telephoned from the UK,¹⁸ saying ‘I can offer you ten days.’ On behalf of the CCP Team, Ibrahim responded: ‘If you can offer us one hour, just get on a plane and come, just to be here and do what you can.’¹⁹ The colleague proved to be an excellent organizer who knew exactly what to do in a supportive manner without becoming intrusive or burdensome. She was joined by another peaceworker who travelled from South Africa in support of Kenyan colleagues.

The Open Forum served as the public face of CCP, exuding welcome, inclusion and transparency. For all practical purposes, it became a Crisis Situation Room, monitoring the ongoing mayhem in the land, sharing analysis, developing and parcelling out remedial tasks, and receiving reports on initiatives undertaken by individuals and working committees. It provided space for the involvement and contribution of many people, with the CCP’s Core Team playing largely a facilitating role.

As the violence spread and changed character across the country during the initial five days of mayhem, analysis in the morning forum became quite focused. ‘We talked about hotspots and coldspots, and we said: Let’s identify where the hotspots are so that we can intervene, but let’s also identify coldspots which have potential to become hot soon and see if intensification can be prevented.’²⁰ It was this kind of analysis that led, eventually, to the formation of the Nairobi Peace

‘We talked about hotspots and coldspots, and we said: Let’s identify where the hotspots are so that we can intervene, but let’s also identify coldspots which have potential to become hot soon and see if intensification can be prevented.’

¹⁸ Joan McGreggor, a trainer and peacebuilding practitioner with Responding to Conflict in Birmingham. The other volunteer was Brian Williams from South Africa

¹⁹ Dekha Ibrahim Abdi, “Working for Peace in Conflict Systems in Kenya: Addressing the Post-Election Crisis 2008,” Berghof Research Center for Constructive Conflict Management, Berghof Handbook Dialogue No. 6, July 2008. www.berghof-handbook.net.

²⁰ Ibid.

Forum (see below) when it became clear that violence was approaching the capital.

The Open Forum was conducted on the basis of CCP's core values: dialogue, mutual respect, inclusion, tolerance, and participation. Irungu Houghton, a prominent member of CCP and a resourceful organizer, observed that already by the third day, the Open Forum had become a fairly focused 'idea-harvesting-session' that welcomed and debriefed newcomers, restated CCP's core values, heard testimonials on motivation for attending the Forum, provided participants with opportunity to report on experiences with violence, and suggested appropriate coordinated activity for participants who volunteered their time.²¹ Sometimes the meetings carried on for hours, giving vent to strong emotions or lending empathetic ears to particularly poignant reports. Some of the action ideas put forward were carefully and discretely rejected by the Open Forum. At other times the analysis pointed toward obvious and urgent action suggestions which were quickly supported, coordinated and mobilized. Mwangi Waituru, who served as a key link person with the vernacular radio stations, exuded: 'CCP gave us wings.'²²

A web of interrelated groups emerged from the Forum, with the word 'concern' introducing a common identity: Concerned Youth for Peace, Concerned Kenyan Writers; Concerned Artistes and Celebrities for Peace; Concerned Women of Kenya, etc. Each of these groups and their leaders were in turn linked to other networks and relationships. Additionally, the Open Forum served to build cross-party and cross-ethnic solidarity, affirming a common Kenyan identity. Into this place and into this dynamic Kenyans were drawn to combine their skills with each other in a common effort toward the peace of the land.²³

²¹ Irungu Houghton, interview.

²² Waituru Mwangi, interview.

²³ Njeri Karuru, Interview, IDRC Offices, Nairobi, May 25, 2009.

Each session of the Open Forum was opened and closed with the singing of all three stanzas of Kenya's national anthem, sung sometimes in English, the 'official' language, and sometimes in kiSwahili, the 'national' language. In the Open Forum, described variously by participants as The Harvest Room, The Synergy Room, The Sharing Space, the national anthem was re-discovered as a powerful prayer.

*O God of all creation
Bless this our land and nation
Justice be our shield and defender
May we dwell in unity
Peace and liberty
Plenty be found within our borders.*

*Let one and all arise
With hearts both strong and true
Service be our earnest endeavour
And our homeland of Kenya
Heritage of splendour
Firm may we stand to defend.*

*Let all with one accord
In common bond united
Build this our nation together
And the glory of Kenya
The fruit of our labour
Fill every heart with thanksgiving.*

Kenya National Anthem

Already within the first week of its life, CCP had cultivated an identity and established a fledgling narrative. Irungu Houghton and his colleagues at Oxfam GB quickly helped in the development of the CCP identity, including a logo, a letterhead and calling cards for the five founders. Documents, emblazoned with the universal symbol of the peace dove bearing an olive twig and a full colour Kenyan flag, proclaimed:

The CCP mission:

‘Giving a Voice to Kenyan Citizens to Engage and Contribute in the Creation of Peace and Hope.’

The CCP vision:

‘Creating a citizens’ movement that will create [a] just peace for all.’

The Citizens’ Agenda for Peace

On January 9, 2008 the CCP released a document entitled: ‘Citizens’ Agenda for Peace’ (CAP). With this document the CCP offered its understanding of the crisis and made proposals for a peace process, and thus placed itself within the ensuing national and international diplomatic effort in search of peace in Kenya. Included in the document were suggested strategies for ending the crisis, including a recommendation for the formation of a grand coalition government. Appearing as it did – only 10 days into the crisis – the document was remarkable for its prescient conclusions and recommendations. A seven-point agenda articulated in the CAP bore a striking resemblance to the official four-point mediation agenda²⁴ that subsequently guided the negotiations led by Kofi Annan.²⁵ The CAP was made available both to the local and to the international media corps during a press conference convened at the Serena Hotel.

²⁴ The four-point official mediation agenda included: 1. Immediate action to stop the violence and restore fundamental rights and liberties; 2. Addressing the humanitarian crisis and promoting national healing and reconciliation; 3. Steps to overcome the political crisis (commonly referred to as ‘power sharing’); and 4. Dealing with long-term issues and solutions.

²⁵ Mwangi (2008), in his timely book, perhaps so far the only book-length analysis of the crisis and the mediation, is somewhat dismissive of what he views as the naivety of CCP in suggesting a ‘citizens’ agenda’ while in fact the crisis was “a political problem, amongst political actors.” In his opinion, “it needed a political solution, not some far fetched citizens’ agenda.” “But,” Mwangi concedes, “as it turned out later, some of these agenda items ... were similar to those that featured in the eventual mediation.” *The Water’s Edge: Mediation of Violent Electoral Conflict in Kenya*, Nairobi: Institute of Diplomacy and International Studies, (p. 49-50).

CAP’s Seven-Point Agenda included:

1. The restoration of peace. The immediate cessation of violence was essential to stem the loss of life and property and to begin a process of national reconciliation and healing. All actors would need to cooperate to end the violence and encourage peace initiatives (cf. Agenda Item 1 of the official mediation)
2. The building of trust and confidence between the political principals. CCP recognized the history of injury and mistrust between political groups that underlay the post-election crisis. CCP recommended specific measures to build trust and promote dialogue.
3. Election closure. Agreement was needed on how to conclude the dispute regarding the outcome of the elections (cf. the agreement within the National Accord between the parties to form the Independent Review Commission [Kriegler Commission] to investigate the presidential elections).²⁶
4. The formation of a government of national unity. Herewith a quote directly from the document: ‘Given the trends in both the presidential and parliamentary results, a grand coalition or government of national unity will command a significantly popular mandate and be well placed to set the pace for some of the deeper issues that have led to the crisis.’ The document suggested that a coalition government should immediately develop a priority agenda for achieving important reforms. (cf. Agenda Item 3, 4)
5. Agreement on a priority reform-focused agenda to precede the coalition government’s assumption of power. These reforms, it was recommended, should include: electoral, constitutional, judicial, and administrative reforms; the restoration of internally-displaced persons; reconstruction of areas damaged during the violence; plans for economic

²⁶ The parties however chose to give the Kriegler Commission a circumscribed mandate that did not entail pronouncing a winner, assuming that were possible.

growth; addressing longstanding land disputes; changes to end corruption; and pursuit of truth and accountability for reported genocidal and ethnic-cleansing events during the post-election violence. (cf. specific elements agreed upon under Agenda Item 4)

6. Setting the date for the next presidential and national elections. Here, the CAP suggested that a coalition government would need to function as an interim basis, facilitating the return of peace, reforming the electoral system and other institutions, before calling for fresh elections. The document did not anticipate that the parties would agree to form a coalition government with a five-year mandate.
7. A global agenda to restore Kenya's international respectability, recognizing the importance of Kenyan stability to the security of neighbouring states.

By itself, the development of the document served as testimony to the resourcefulness available within the CCP network. At the onset of the crisis, prominent business community personalities expressed concern about the turn of events, coming, as it did, at a time when optimism regarding Kenya's business environment – after years of stagnation – had been upbeat. Business leader Mike Eldon, a key member of the CCP, along with Irungu Houghton, another key member and a resourceful CCP strategist, ensured the involvement of business people and professionals within CCP, some of whom had been involved in a prescient Kenya Scenarios Project in 1999-2000. Several of these people, including particularly John Kashangaki and Josephat Mwaura, lent their very considerable expertise to the drafting of the CAP and its presentation to the media.

Engagement with the Formal Diplomatic Peace Process

The Open Forum represented the public engagement of CCP. However, before, during and after the emergence of the Open Forum, quiet behind-the-scenes initiatives by CCP were encouraging contact and dialogue between the protagonist parties. These initiatives were undertaken both directly and indirectly through emissaries. After the arrival of Kofi Annan and the launch of the formal mediation process, CCP's quiet diplomacy continued through two of its committees, the High-Level Dialogue Committee and the Technical Committee,²⁷ and sometimes through individual Core Team members. CCP's engagement with high-level dialogue was variously undertaken, as cited in the following paragraphs.

President Tejan Ahmed Kabbah - *The First 'Shuttle Diplomat'*

Louis Pasteur once said, 'Chance favours the prepared mind.' Opportunity for the CCP team's first engagement with behind-the-scenes diplomacy was essentially serendipitous but it also turned on a history of relationships. Upon arriving at the Serena Hotel on December 31 2007, the team learned that Tejan Ahmed Kabbah, the former President of Sierra Leone, was staying at the hotel, having

²⁷ Besides the five founders, members of the Technical Committee included Sam Kona, Njeri Karuru, Irungu Houghton, Prof. Humphrey Ojwang, Alex Nyago and Mike Eldon, among others. Even here, CCP maintained a level of openness, with various other people participating in this committee from time to time.

come to lead the Commonwealth Election Observer Mission to Kenya.

An opportunity presented itself. Ambassador Kiplagat approached ex-President Kabbah and urged him to ‘change his role from an observer to a mediator.’ After consultations, Kabbah agreed to extend his stay and to become, effectively, the first ‘shuttle diplomat’ in Kenya’s crisis. His acquaintance with Kiplagat through previous engagements with the Africa Peer Review Mechanism, and with General Opande, who had served as a UN Peacekeeping Force Commander in his country, proved to be invaluable assets throughout the proceedings of the next several days. CCP arranged for Kabbah to receive Raila Odinga at the hotel. Senior PNU politicians were also ‘ambushed’ by CCP in the lobby of the hotel and persuaded to proceed upstairs to Kabbah’s suit.²⁸ Later Kabbah was able to meet with Kibaki. During the course of these initiatives, the CCP team held a number of debriefing sessions with ex-President Kabbah.

Archbishop Desmond Tutu-Testing the Waters, Rallying the Churches

The second engagement with early high-level diplomacy comprised the visit to Kenya by Nobel Laureate, Archbishop Desmond Tutu. Communications initiated by Wachira and Kinyanjui to South Africa on December 31, 2007 eventually landed Tutu in Kenya²⁹ on January 3, 2008, accompanied by the head of South Africa’s Electoral Commission, Ms. Brigalia Bam.³⁰ By means of this remarkable early

²⁸ Indeed the hotel provided numerous opportunities for ‘ambush diplomacy’.

²⁹ Officially, Tutu’s visit was sponsored by the All Africa Conference of Churches and the Fellowship Of Councils of Churches of the Great Lakes and Horn of Africa (FECCLAHA), and hosted by the Kenyan churches.

³⁰ At this early stage, there may have been the expectation that the electoral process could be revisited to establish what went wrong and perhaps have it rectified. Bam held meetings with ECK officials, including chairman Kivuitu.

intervention, the CCP team was available to interact with Tutu as he undertook his rounds of visits, briefing him at the initial stage of his visit and then participating in later debriefing sessions.

From the perspective of formal mediation theory, some observers would argue that both the Kabbah and the Tutu appearances came too early in the crisis; from this perspective, the moment for intervention was ‘not yet ripe’. However, in retrospect, it is possible that the very public presence of these international personalities may have helped to incline the unfolding dynamics toward an eventual acceptance of dialogue. A statement issued by the AACC at the end of Tutu’s visit indicates that Tutu may have been the first external actor to listen to the positions of the two sides. The statement summarises the positions taken by both PNU’s Kibaki and ODM’s Odinga in their separate meetings with Tutu.³¹

At this early stage, the principal protagonists were staking out polar opposite positions, with the ODM refusing to recognize Kibaki’s presidency and insisting that he was still serving his first term pending the determination of the legitimate election results. “Truth” and “justice” with regard to the election results became a clarion call. PNU, on the other hand, were keen to assert their legitimacy and to insist on the non-negotiability of the presidency. Indeed, PNU was averse to any suggestion of mediation and most certainly not mediation by an external entity or personality. Even as the protagonists clung to their respective positions, it became clear that these early interventions provided opportunity for testing the waters for possible alternatives.

³¹ “Embrace Peace and Dialogue, Urges Tutu”, All Africa Conference of Churches, Nairobi, Kenya, January 2008.

Within CCP there was a strong sense that the mere presence of international figures was in itself helpful. Moreover, given the divisions within the country and given the level of mistrust between the leaders, the CCP became convinced that international intervention was necessary. Earlier on after the CCP media launch, the ODM had publicly rejected the CCP's overtures toward dialogue, intimating that the group was not equal to the task. From that point on, there was a consensus within CCP's Core Team that international intervention was inevitable; hence the CCP's positive view of the presence in the country of high-profile visitors during the early stages of the crisis. True, these early visitors were not able to bring the protagonists to dialogue; their mere presence, however, was psychologically re-assuring to a shaken nation and may also have contributed incrementally toward a readiness for face to face talks.³²

Importantly, Tutu's presence encouraged Kenyan churches to reclaim their space in a land of divided polity, a space which many observers considered to have been vacated by the churches in the months and years preceding the elections due to perceived political alignments.³³ Later on, the National Council of Churches of Kenya (NCCCK) played a leading role within the Inter-Religious Forum and engaged extensively with the mediation process as well as with CCP. Subsequently, the NCCCK apologized in a public statement for having failed the nation and pledged to undertake a new beginning. Tutu's presence in the country during the height of the crisis may have had more than the immediately perceived impact.

³² Wachira interview.

³³ The AACC statement concludes by affirming the leadership of the local churches in their response to the crisis. It further expresses the hope "that this visit contributed to the rekindling of hope and confidence amongst them to resolve the problem." AACC, *Embrace Peace and Dialogue*.

Distinguished Personalities in Town

A third category of CCP engagement with high-level diplomacy centred on several clusters of distinguished persons. After some prevaricating, leaders of both the PNU and the ODM agreed to invite the African Union to serve as mediator in the Kenyan crisis. In response, President Kufuor of Ghana, the then incumbent chairman of the African Union (AU), made a visit to Kenya. It was agreed during this visit that the AU's response to Kenya's request for mediation would take the form of a 'Panel of Eminent African Personalities,' comprising Kofi Annan, ex-General Secretary of the United Nations, Benjamin Mkapa, ex-President of Tanzania and Graça Machel, wife of Nelson Mandela and ex-wife of the late Samora Machel, President of Mozambique.

Other distinguished African personalities came to Nairobi in support of the mediation process on informal bases. These included Kenneth Kaunda, ex-President of Zambia, Ketumile Masire, ex-President of Botswana, and Joachim Chissano, ex-President of Mozambique. All of them – whether formally or informally present – were lodged at the Serena Hotel, thus facilitating ready and extensive engagement with members of the CCP. Communication between the distinguished persons and CCP team members was rendered easy because of various earlier encounters – in particular with Sumbeiywo, Opande, and Kiplagat. Additionally, all of these personalities had early access to the CCP document entitled, 'Citizens' Agenda for Peace,' which served both as a useful basis for engagement with the CCP and with the larger dialogue process. Other concerns and 'findings' generated during CCP's Open Forum were shared with these personalities as deemed appropriate.

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At a time when the Eminent Personalities group was waiting for contact with Kibaki and the PNU, Opande facilitated meetings between them and local communities in the Eldoret area where the violence had been extreme, visiting camps of internally displaced Kenyans and the burned Kiambaa church.³⁴ National and international media covered the group's tour, bringing new attention to the Kenyan crisis. Soon thereafter, the Panel of Eminent African Personalities was able to meet with Kibaki. Like the Tutu visit, the presence in Kenya of the Eminent Personalities imparted a sense of hope and re-assurance at a time when tensions were still high.³⁵

Like the Tutu visit, the presence in Kenya of the Eminent Personalities imparted a sense of hope and re-assurance at a time when tensions were still high.

Other high level visitors who arrived in Kenya during the early days of the crisis included Ugandan President Yoweri Museveni and UN Secretary-General Ban Ki-moon. CCP was able to meet and to brief Ban Ki-Moon. But meetings with Museveni, and earlier with President Kufuor of Ghana, did not materialise. But this failure to meet, especially in the case of Kufuor, was not for lack of trying. Upon learning of Kufuor's intended visit to Kenya, Wachira had contacted a peaceworker colleague in Ghana³⁶ in the hope of arranging a meeting with Kufuor. However this effort did not succeed; Kufuor's office had indicated early on that he would not be meeting with civil society actors. According to the media, visits to Kenya by Kabbah, Tutu and Kufuor had all proven to be failures. But, as noted elsewhere, Kufuor's visit had led to an agreement between the Kenyan protagonists on the choice of Dr. Kofi Annan as the AU-sponsored mediator.

³⁴ Opande, interview.

³⁵ Wachira, interview with Simon Charles, Nairobi.

³⁶ Mr. Emmanuel Bombande, formerly of NPI-Africa and now head of the West Africa Network for Peacebuilding (WANEP) in Accra, Ghana, was contacted.

But even with this 'agreement' on Kofi Annan, the parties remained deadlocked on the intent or purpose of such external intervention. Odinga's ODM focused on the language of 'mediation', hoping for an internationalization of the crisis that would increase ODM's legitimacy as a claimant to power in a reconstituted government. Kibaki and the PNU, in contrast, resisted internationalization of the dispute,³⁷ hoping to retain a grip on what appeared increasingly to be a tenuous election victory. PNU did allow the language of 'dialogue' and conceded some willingness to 'accommodate' ODM in government, but on PNU's terms. When the ODM was accused of 'ethnic cleansing' directed against PNU supporters in the Rift Valley, PNU stalwarts now took up the "justice" call previously associated with their rivals, this time appealing for international 'justice' for the victims of the violence. The ODM, meanwhile, sought to focus media attention to the increased police violence against the demonstrators, which ODM activists blamed on the PNU who were, of course, accused of 'stealing the election' and therefore triggering off the crisis. Such were the constructions of attack and counter-attack, hurdles which Annan and his colleagues were now called upon to overcome.³⁸

By this time the mood and levels of violence in the country tended to mirror rather precisely what was happening in the political and diplomatic arenas. For example, on the day before Kufuor's arrival in Nairobi, January 8, 2008, Kibaki had invited Odinga for talks, raising some optimism in the country that there was room for dialogue. Almost immediately, however, this optimism was shattered when Kibaki announced a new government comprising 17 ministers with former presidential contender, Kalonzo Musyoka, slated as vice-president. It was

³⁷ This was perhaps reflected in the Government Spokesman's reference to Kufuor's visit as an invitation by his age mate (meaning Kibaki) 'to have a cup of tea.'

³⁸ Wachira. Interview with Tom Arendshorst, University of Notre Dame.

For example, on the day before Kufuor's arrival in Nairobi, January 8, 2008, Kibaki had invited Odinga for talks, raising some optimism in the country that there was room for dialogue.

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clear that Kibaki had raised the stakes before commencing any 'dialogue' with Odinga.

Meanwhile, PNU claimed that Kibaki had formed only half of the government and had left open the possibility of inviting the ODM to join the government. In reality all appointments to the key ministry positions had already been made. CCP's Core Team members heard the announcement of the new cabinet just as they were concluding a productive meeting with the Ministry of Education to consider counter-violence strategies in the about-to-open secondary schools and universities. Kibaki's move sparked a country-wide frustration, ensuring that meaningful engagement with ODM was now in jeopardy.³⁹ Following the announcement of the cabinet, new waves of arson, evictions and killings were reported from around the country, aspects of which were targeted at presumed supporters of Musyoka who was now perceived as a traitor.

Kofi Annan's negotiation process was also accompanied by mirror-image upsurges of tension and violence triggered by developments within the mediation process or by the utterances of the key political leaders. Similarly, two shooting deaths of ODM members of parliament – one in Nairobi and the other in the Rift Valley – within days of each other provided another challenging moment, particularly when it appeared initially that some forces within the country were determined to sabotage the negotiations. Each death sparked a new wave of violence. It emerged, subsequently, that the two deaths were not politically inspired.⁴⁰

³⁹ Back at Serena Hotel from the Ministry of Education that late afternoon following the announcement of the government, there was clear frustration and feelings of discouragement among CCP Core Team members. Wachira remembers it took the encouragement of Kinyanjui (he had accompanied the team to the MOE) who reminded the team that these setbacks were to be expected.

⁴⁰ Ibrahim and Wachira often talked about how the unfolding crisis closely mirrored simulations and role plays they had often used in training workshops on crisis intervention.

Thirdly, by means of mobile phones some Kenyans were circulating virulent text messages, many of them unfounded rumours intended to incite ethnic hate.⁴¹ Some messages cited assassination threats or the arrests of key ODM leaders. These messages of disinformation had the effect of spreading despondency and thus fuelling additional tension and violence. Some radio stations broadcasting in vernacular served as primary conduits for ethnic chauvinism, negative group solidarity and hate messages. For these reasons, the CCP focused its early remedial initiatives on the so-called 'ethnic' radio stations (see below).

The Kofi Annan Mediation Process

Kofi Annan's mediation process provided CCP with another opportunity to maximise the positive elements of previous relationships, strategic choices and coincidences. CCP enjoyed easy access to Kofi Annan and a confident working relationship with his team, thanks to previous engagements between Annan and three of the five CCP founder members – Kiplagat, Opande and Sumbeiywo – in their respective diplomatic, peacekeeping and peacemaking roles. In the not too-distant past, Opande had served under Annan with peacekeeping missions in Sierra Leone and Liberia. Irungu Houghton, a key CCP member, had enjoyed a prior acquaintance with the new chief of staff in Annan's secretariat.

In terms of strategic positioning, CCP's timely appearance on the crisis scene ensured that its existence had already registered in the awareness of diplomatic-dialogue circles.

⁴¹ A typical message sent to members of one ethnic community would say that so many of their members had been 'massacred' at a particular place by members of another ethnic community, effectively inviting action against members of the alleged attackers' community. CCP's Media Committee explored with mobile phone service providers whether such messages could be filtered and blocked.

Some radio stations broadcasting in vernacular served as primary conduits for ethnic chauvinism, negative group solidarity and hate messages.

From that point through to the signing of the formal peace pact five weeks later, the CCP Team interacted closely with the mediation process, providing comment and suggestions as requested.

Additionally, the CAP document had served to situate CCP with regard to the crisis, suggesting avenues toward resolution. And then there was the critical and fortuitous choice of place. The Serena Hotel served as the venue both for the Kofi Annan mediation process and as CCP's operational base; some of the meetings chaired by Annan were convened in the room immediately adjacent to the CCP meeting room. This proximity facilitated ready engagement with many aspects of the mediation process.

When Annan arrived in Nairobi to begin his work, the CCP was the first civil society organization to have an audience with him. From that point through to the signing of the formal peace pact five weeks later, the CCP Team interacted closely with the mediation process, providing comment and suggestions as requested. CCP also facilitated vital links between other civil society organizations and the official mediation process. Thus, on January 24, CCP convened a meeting bringing together the Inter-Religious Forum, the Kenya Private Sector Alliance, the Media Owners' Association, the Peace and Development Network of Kenya, and Kenyans for Peace with Truth and Justice. On occasion there was opportunity to exchange and compare perspectives and to move together in support of a common approach to the mediation process.⁴²

⁴² Interview, Sam Kona, CCP Technical Committee member.

The Web of CCP Peacebuilding: *Working with Other Strategic Constituencies*

Print and Electronic Media

After initially treating the unfolding crisis as merely an extension of the electoral contest which some of them had covered in an obviously biased manner, the mainline media houses – with few exceptions – eventually played largely positive roles in the peace process. As noted elsewhere in this account, CCP was launched with the enthusiastic support of the media, thanks to the personal involvement of the CEO of the Nation Media Group (NMG). In the following days and weeks, the NMG repeatedly aired CCP's appeals for peace and dialogue on radio and television. At the instigation of the NMG, these messages were recorded with the five Core Team members at Serena Hotel and then aired, accompanied by patriotic music. Additionally, the NMG met the costs of CCP's full page appeals for peace in the Daily Nation newspaper, featuring the photos and messages of the CCP Core Team on alternate days.

Altogether, the CCP and its activities were accorded largely positive media coverage. A Daily Nation article described the 'peace alliance' formed by Kiplagat, and cited international pressure on Kenya's political leadership to support the effort.⁴³ In the Business Daily of January 4, 2008 an article urged leaders to listen to moderate voices and lamented the disregard of CCP by some of the political leaders.⁴⁴ The same

⁴³ Abdul Samad Ali, and Machuhi, Eunice, "More Leaders Call for an End to Poll Deaths and Chaos," *Daily Nation*, January 3, 2008.

⁴⁴ Simon Gikandi, "Let Moderate Voices Be Heard in This Din of Hate," *Business Daily*, 4 January, 2008.

These young refugees made moving appeals to Kenyan youth to avoid destroying their own country; 'You will be the losers'.

edition included a two-page spread on Kenya's emerging peace movements, including CCP and its rapidly developing grassroots engagements.⁴⁵ On January 10, the Daily Nation reported the substance of the 'Citizens' Agenda for Peace.' Business leader and CCP member Mike Eldon, also a columnist for the Business Daily, wrote a number of articles on the crisis, on the mediation process, and on the role of CCP. Such media coverage of the CCP initiative provided early and powerful leverage to Kenyan hopes for peace.

With media support virtually guaranteed, CCP was able to organise press conferences for a variety of civil society groups including professional women's groups; youth groups from violence-hit areas of Nairobi; artistes; and radio personalities/comedians. At the suggestion of the CCP's Concerned Youth for Peace, one press conference involved young refugees from war-torn countries residing at the time in Nairobi. These young refugees made moving appeals to Kenyan youth to avoid destroying their own country; 'You will be the losers'. It was a message resonating well with the repeated messages from the CCP founders: experience in other war-ravaged African countries had demonstrated the total futility of violence. Happily, Kenya's media served as a key partner in spreading this message.

In meetings with the Media Owner's Association (MOA), Chairman Hannington Gaya, CCP urged the broadcast and print media to assess their respective roles in the crisis and in the unfolding peace process. Through these meetings, MOA agreed to ignore all hate messages, whether from political parties or other groups,⁴⁶ and to

45 Joseph Ngunjiri, "Peacemakers Out to Restore Hope in the Country Amidst Ethnic, Political Divisions," *Daily Nation*, January 6, 2008.

46 In one such example, leading personalities from one community called a press conference at the Serena Hotel. On seeing their press release, which amounted to a call to war, CCP members called the MOA chairman who agreed to have the media houses 'kill' the story.

ignore individual politicians who were inciting hatred.⁴⁷ These deliberate strategies by Kenya's media to limit abuses were in sharp contrast to media responses during previous catastrophes such as the one in Rwanda.⁴⁸ The MOA impressed on newspaper managing editors to apply 'conflict sensitivity'⁴⁹ and to 'take responsibility' for their respective roles during the crisis.⁵⁰ A major development involving the MOA – remarkable for its timeliness and impact – was the decision by four of the leading Kenyan dailies (Daily Nation, The Standard, The People, and Kenya Times) to run a common headline on January 3, 2008: 'SAVE OUR COUNTRY'. The media recognized the serious danger facing the country.⁵¹

Having engaged intensively and purposefully with the Kenyan media, CCP's Houghton recalled how appalled he was by the global media's portrayal of the raging crisis. In his view, the international networks – CNN, Sky News, BBC and Al-Jazeera – were being seduced by "the pornography of ethnic conflict," airing "images that would not have been allowed by any international broadcasting standards,"⁵² Houghton remonstrated with select international correspondents in

47 "Concerned Citizens for Peace: Giving a Voice to Kenyan Citizens to Engage and Contribute in the Creation of Peace and Hope," (Concerned Citizens for Peace, 2008).

48 It should be recalled that before the elections, some of the CCP founders, working with others under a different initiative, the Partnership for Peace, had sponsored a visit to Rwanda of Kenyan journalists intended to provide learning and warning on the negative role of the media in the genocide in Rwanda. An investment had therefore already been made in this question of the role of the media.

49 CCP took on the theme of 'conflict sensitive journalism' and later partnered with NPI-Africa to conduct training to journalists on conflict sensitivity, with funding from USAID.

50 Sheila Amdany, Interview, Jacaranda Hotel, Nairobi, 19 June, 2009. Amdany recalls one print advertisement in which a figure pointed at the reader, saying, "I'm a citizen of peace – are you?"

51 This did not necessarily mean that the media houses had arrived at a common policy on how to cover the crisis; on the contrary, the biased reporting that had marked the campaign period was evident during the crisis.

52 Irungu Houghton, Pan-Africa Director for Oxfam and eventual member of CCP's Technical Committee, Interview, Nairobi, June 2008.

Nairobi, encouraging less sensational and more empathetic and sensitive reporting. Locally, the MOA agreed to broadcast acts of peace, mediation and solidarity among different communities as a counterpoint to the emphasis on violence. According to Houghton, by the third week of the crisis, Kenya's media had successfully projected an impression that, 'for every person who was attacking his/her neighbour, there was another person protecting his/her neighbour.'⁵³

Houghton and a team of volunteers from his office helped to develop Amani Sasa (Peace Now), a daily newsletter. It became available to each session of the Open Forum, featuring messages of peace and tolerance, highlighting ways in which ordinary Kenyans could become and were becoming involved with the CCP initiative.⁵⁴

CCP's Media Committee successfully courted the collaboration of Kenya's leading mobile phone companies, who agreed to send text messages to Kenyans urging peace and tolerance.⁵⁵ This initiative had a context: during the heated campaign period and soon after the eruption of violence, 'text-messaging' had become a major vehicle for distributing hate messages. Subsequently, one of the mobile phone companies agreed to post a permanent automated peace message to be triggered whenever clients 'topped-up' their cell phone credit.

When he began attending the Open Forum on January 10, George Gachara was able to offer vital information on

⁵³ Ibid.

⁵⁴ Concerned Citizens for Peace. "Post Election Conflict Transformation: Creating Public Accountability for Implementing the Truth, Justice and Reconciliation Agreements and Promoting Peaceful Coexistence Among Kenyans: March 2008-March 2009." (Concerned Citizens for Peace, 2008).

⁵⁵ This trend had been initiated before the elections under the campaign dubbed 'Chagua Amani, Zuia Noma' ('Vote for Peace, Shun Chaos') run under the Partnership for Peace.

events taking place in various parts of the country, thus adding value to the quality of the CCP's Situation Room 'hotspots/cold spots' analyses and responses. Gachara, a university student leader, helped to organize an SMS Information Initiative through CCP's grassroots partner, Peacenet. The SMS centre acted as an emergency hotline, fielding messages which solicited contributions toward emergency relief purposes.⁵⁶ Kenyans from all over the country sent messages requesting assistance from the police and sent alerts regarding political instigation of violence.

Other Groups within CCP

Sub-groups formed severally under the CCP 'brand name' and participated actively in the Open Forum and its follow-up activities. One of these, the Concerned Kenyan Writers (CKW) deserves special mention. Shalini Gidomol, a key mover and shaker within the group, was motivated to assume responsibility to inform the world about Kenyan issues, and particularly the 'Why?' of the Kenyan post-election crisis. Thus, within the first few weeks of the crisis, the group had written nearly fifty articles and had placed them strategically in leading international papers in the US, in Europe and in South Africa, spawning lively debates in the 'blogosphere'. This same group linked CCP with voices for peace, active within the Kenyan Diaspora.⁵⁷

⁵⁶ Peacenet Kenya, "Elections Violence Response Initiative: An Account of Civil Society and Community Response Initiative." (Peacenet Kenya, 2008). www.peaceinkenya.net/EVRI-REPORT.doc

⁵⁷ In almost every conflict in Africa and elsewhere, the Diaspora plays important roles, both negative and positive. CCP was therefore keen to make contact with Kenyans in the Diaspora and was already building relationships with groups such as VUMA Kenya.

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Work with Vernacular Radio Stations

The sudden, calamitous onset of ethnic violence had been stoked vigorously by some of Kenya's vernacular FM radio stations. These stations, broadcasting exclusively to ethno-linguistic audiences, played a major role in fomenting hate and inciting the respective ethnic groups to violence against their fellow Kenyans. Sumbeiywo remembers being invited to KASS FM on December 31, 2007, the leading and popular Kalenjin vernacular station, to address its listeners at a time of anger and raging violence in the Rift Valley. Peace was the last message that people wanted to hear then, but Sumbeiywo, speaking as an elder insisted on it. He reminded listeners of their sacred cultural traditions that prohibited certain acts such as harming innocent people and burning homes, even during war. Subsequently, both Sumbeiywo and Kiplagat were to speak on KASS FM several other times during the crisis.

The electoral contest had been characterized by a siege mentality ('they' want to grab power from 'us, we must protect it by all means) and a grudge mentality ('they' kicked us out of government after we helped them win, now is pay-back time). Thus, even during the height of the campaigning period, some vernacular stations advocated the protection of 'their' incumbent and his community, and others advocated as well for electoral victory as spiteful revenge for past unfair treatment. Waituru Mwangi, a CCP member, who took the lead in organizing encounters between CCP and vernacular radio presenters, observed that even before the election results were announced, some of the radio personalities were already flaunting 'us' vs. 'them' taunts, thus fuelling ethnic antagonism and violence.⁵⁸ Clearly, in its quest for calm, CCP could not ignore the power of the radio stations.

⁵⁸ Mwangi Waituru, Interview, NPI-Africa Offices, Nairobi, May 20, 2009.

In mid-January, at Mwangi's initiative, CCP invited vernacular broadcasters to a meeting at the Serena Hotel. Only seven persons from the stations attended what proved to be a difficult meeting. Discussion was torturous; participants defended their stations and their reporting patterns. However, when CCP Core Team members persisted, the tense, uncommunicative meeting ended with an agreement to hold a larger meeting, to be convened by the broadcasters themselves. In the meantime, those present promised to do everything possible to transform their radio programmes into instruments of peace.

A second meeting held at the Panafric Hotel, on January 20 was attended by fifty persons, representing all the main vernacular stations. While some lamented that their reporting policies were dictated by the respective station owners, many of those present agreed that the situation in the country was dire. Subsequently, CCP arranged for conversation between members of the Media Owners Association and the Media Council of Kenya. CCP's prolonged discussions with the FM radio personalities focused on the sensitivities related to conflict and peace in radio programming and led to changes in the messages broadcast by the stations. One of the leading stations in particular made dramatic changes in its programme content.

Engagement with Government Departments

After the eruption of violence, the CCP's Core Team worked as quickly as possible, through personal relationships and official channels, to engage with the organs of government, with religious organizations, with business and other leaders. At government level, CCP focused on the National Steering Committee (NSC), the

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Nairobi Provincial Administration, and the Ministry of Education.

NSC Secretariat and the Nairobi Provincial Administration

CCP recognised that while the crisis had seriously hobbled the government and its capacity to act, still the government retained control over select domains and critical systems. In any case, the government's total collapse was an unthinkable alternative. Years earlier, Ibrahim, had been involved in the development of the NSC, the body coordinated by the Office of the President which related to civil society groups and government agencies for purposes of focusing on peacebuilding and conflict resolution. CCP now approached NSC, stimulating the NSC to fulfil its mandate.

A key element of the 'Situation Room' function of the Open Forum was the 'cold spots/hot spots' analytical framework that helped the group to track the development and spread of the violence. With the aid of this instrument, the group was able to anticipate how the violence was spreading and how current 'cold spots' might become 'hot spots' within a short time. Thus, as the violence spread to Nakuru (170 KM from Nairobi) and then to Naivasha (90 KM from Nairobi), it was feared that the isolated violent spots within Nairobi could easily spread in a few days to consume the whole city. If the city imploded, CCP reasoned, then the country would be 'lost'. Hence the urgent perceived need to focus on saving Nairobi and reducing the potential impact of spreading violence. Inspired by previous work under the Partnership for Peace and Ibrahim's work in North-Eastern Kenya during the 1990s, CCP initiated

discussions with the NSC Secretariat and the Nairobi Provincial Commissioner.

At the same time, the CCP Core Team contacted newly-elected, re-elected and defeated Members of Parliament (MPs) to devise strategies and tactics to encourage peace and curtail bloodshed in their respective Nairobi constituencies. The response was unexpectedly warm, with five (four newly-elected or re-elected and one recently defeated) appearing for the first meeting at the Serena Hotel. In the event, they were already preoccupied with major challenges as a result of the violence; these included the provision of relief to internally displaced constituents and arrangements for the transport of dead bodies for upcountry burials. They were keenly aware, therefore, of the need for peace even as they grappled with their respective political party positions regarding the violence. As a larger meeting was being planned, one Nairobi MP (not among those who had attended the first meeting) was killed, thus jeopardizing the initiative.

In the meantime, as a result of the discussions with the NSC and the Nairobi Provincial Administration, it was agreed to establish the Nairobi Peace Forum (NPF) comprising the NSC Secretariat; the Nairobi Province Security Committee; the Ministries of Education; Youth; Health; Information; the Kenya Private Sector Alliance (KEPSA); Maendeleo ya Wanawake (Kenya's foremost women's group); the Jua-Kali Association (a workers' association in informal industry); Resident Associations; the National Council of Churches of Kenya; and various national and international NGOs. CCP co-chaired the NPF meeting with the Nairobi Provincial Commissioner, and provided strategy development support including

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peacebuilding training and capacity-building.⁵⁹ By pulling these organizations together, CCP had enabled them to collaborate and contribute ideas, expertise, and resources to the growing peace initiative.

Reaching further to community grassroots, CCP helped to organize District Peace Committees (DPCs) for the three Nairobi districts, strengthening the involvement of citizens in the search for and the securing of peace. Again, peacebuilding training for the DPCs was provided by CCP and supported by NPI-Africa.⁶⁰

Not all of the interactions between the CCP and the government bureaucracy went smoothly. The Kibaki administration was under severe pressure; it held onto power tenuously, but strongly resisted any entanglements that might have suggested a search for or negotiations toward legitimacy. Some government officials responded to CCP offers of peacebuilding support with defensive resistance, even when it was obvious that the crisis had led to high levels of ethnically-inspired stalemate and paralysis within the bureaucracy.⁶¹ The same ethnic stalemate that was threatening to paralyse the civil service was also being experienced in offices and businesses across the country. Thus, at the invitation of the Institute of Human Resource Management, CCP facilitated a workshop on workplace relationships and peacebuilding for human resource managers in some of Kenya's largest companies.⁶²

⁵⁹ The training/capacity building role for the NPF was later taken on by NPI-Africa.

⁶⁰ Funding for this activity was obtained from the United States Institute of Peace through a grant to NPI-Africa.

⁶¹ Ibrahim Abdi, Interview.

⁶² Mike Eldon, Interview, Symphony Palace, Nairobi, May 27, 2009. See also Michael Eldon, "Honest Appreciation Can Heal the Nation," *Business Daily*, February 21, 2008.

Ministry of Education

All of Kenya's state schools and universities were due to open on January 8, 2008. The CCP feared that outbreaks of ethnic violence might occur among students and even among teachers. Some schools had been burned, some teachers had been killed, and some teachers were requesting transfers to areas where their own ethnic communities were in the majority. CCP tried to understand the MOE's thinking with regard to the situation and to ascertain whether any mitigating initiatives were in place. A meeting with the Permanent Secretary (PS) in the Ministry of Education was initially depressing and confirmed CCP's fears regarding the precarious condition of the country's educational system. The likelihood of schools and universities re-opening on schedule was, at this point, an unrealistic expectation. CCP urged the PS to prepare the teachers and education officials to deal with the possible consequences of the violence--including trauma, if/when the schools re-opened.

School Heads and Heads of Education

Then the PS decided to convene all heads of schools as well as district and provincial education officers for training on January 15 on ways of dealing with issues that might arise from the ongoing bloodshed and destruction. CCP was invited to address this gathering of over 400 key managers of the education system, focusing particularly on the roles of the education officers in the reconstruction of Kenya's nationhood. Importantly, CCP sought out and mobilized an expert in trauma and trauma counselling who exposed the participants to a basic checklist of elements to watch for within themselves and among their charges that could suggest serious trauma.

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University Vice-Chancellors

Kenya's universities had long been troubled with intermittent closures following violent demonstrations. For a long time, university politics had mirrored political dynamics at the national level. In 2006, NPI-Africa had conducted and then published a study on the prevalence of violence in public universities, discussing some of the political causes of violence and disruption in the universities.⁶³ At this point, the possibility of violence carrying over to the universities seemed very real to CCP. With the endorsement of the MOE, CCP held a major meeting with the vice-chancellors of the public universities, discussing both what the universities needed to consider when re-opening to new semesters, and what might constitute the broader contribution of the universities to the re-imagining of Kenya. Vice-chancellors, in turn, talked of the losses incurred when university dormitories were burned, facilities looted, some faculty members evicted and their homes looted or burned.

University Student Leaders

CCP had a more extensive engagement with the student leadership of public universities. To this end a meeting was convened in a secluded residential property offered by one of the CCP Open Forum participants. Over a seven hour period, CCP and the student leaders discussed the role that students could play in ensuring non-violent engagement when the universities re-opened.

The meeting with student leaders took place soon after the newly elected parliament had held its first session. On live television, Kenyans had watched keenly to see how the bitterly divided leaders (at least in public) would behave

⁶³ See *Violence in Kenya's Public Universities: Reversing the Trending, Building a Culture of Peace*, NPI-Africa, 2006.

towards each other. In the event, debates in parliament, though obviously tense, were carried out according to the rules, with the protagonists using reasoned argumentation to make their points. In the meeting with students, CCP emphasised that the MPs had demonstrated that they could do what they were expected to do; i.e., debate and argue to make their respective points without resorting to violence or insults. Similarly, students had been trained to think and reason; skills which they were now encouraged to deploy in this time of crisis. CCP encouraged them to consider drafting a memo that could be submitted to Kofi Annan. The meeting ended on a high note as the student leaders committed themselves to ensuring that the universities would not experience violence once they opened.⁶⁴

CCP's strategic partnership with the Ministries of Internal Security and Public Service Reforms led to the formation of a collaborative framework for dialogue and peacebuilding.⁶⁵

CCP also engaged with Kenyan churches on violence prevention. Kiplagat, Sumbeiywo, and Eldon worked to inform, support, and collaborate with the National Council of Churches of Kenya, particularly among Kalenjin churches in the Rift Valley, where much of the intense violence had taken place. Kiplagat contacted James Bett⁶⁶, Chairman of the Emo Society, a Kalenjin cultural, economic, non-political association. Together they convened Kikuyu and Kalenjin pastors for regular meetings, which continued long after the cessation of the crisis.⁶⁷

⁶⁴ Nairobi Peace Initiative-Africa. *Civil Society Response*.

⁶⁵ Nairobi Peace Initiative-Africa. *NPI-Africa Response*.

⁶⁶ Sadly, Bett, who had distinguished himself as a key peace strategist and bridge builder, died in a car accident in April 2009.

⁶⁷ Kiplagat's and Bett's initiative with pastors in itself deserves elaborate documentation. It offers important insights both into the challenges facing the church leaders during the crisis and its aftermath and their efforts and struggles to reconcile, heal and reclaim their non-partisan pastoral roles.

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The two generals, Opande and Sumbeiywo, also engaged purposefully with community leaders in the Rift Valley during this time. Opande described to the community leaders the horrors of violent conflict which he had witnessed in Sierra Leone, Liberia, and other African countries, and warned that ethnic and genocidal violence, once unleashed, was very difficult to control. He pleaded with them to understand that their children were destroying their country.⁶⁸

⁶⁸ Opande, interview.

Grassroots CCP Initiatives

CCP's loose organization as a movement meant that it could function at different levels simultaneously: high-level engagement with the dialogue and mediation process; middle-level initiatives with government ministries and the media, and grass-roots engagement with the consequences and mitigation of the crisis. Most of these initiatives flowed from the dynamics of the Open Forum which identified ready volunteers to spearhead them. CCP also maintained strategic linkages with other organizations and individuals working on the ground.⁶⁹ Eventually, the work of the Humanitarian Committee was shifted to Peacenet Kenya's offices whence further activities were coordinated. Within the first two weeks after the onset of the crisis, NPI-Africa organized community-level meetings in the provinces most severely afflicted by the violence, under its 'Listening Initiative'. These initiatives provided spaces for Kenyans to tell their stories emanating from the post-election crisis, to give thought to ways of averting a recurrence of similar violence in the future and to identify measures required for building a new Kenya.⁷⁰ CCP's links with these processes helped to channel support for the 'mourning and burials' initiative described below.

⁶⁹ Ibrahim and Wachira, for example, kept contact with peacemaker Babu Ayindo, based in the badly affected city of Kisumu. At the same time, NPI-Africa initiated a 'Listening Initiative' in Western Kenya, including Kisumu, in which Ayindo and NPI-Africa's George Kut were the lead facilitators.

⁷⁰ Nariboi Peace Initiative-Africa. *NPI-Africa Response*.

Decent Mourning and Burials

The high death toll resulted in an accumulation of bodies in morgues, in the streets and even in the homes of people. At the same time, the ability of people to bury their dead in dignified and culturally acceptable way was severely limited. CCP's engagement with these issues evolved in an organic manner. In a meeting at the Serena Hotel between Core Team members and private sector leader Mike Eldon, it was deemed urgent to gain access to ODM's top leadership. Eldon suggested contact with a newly elected Kisumu MP, a friend who, it was hoped, would serve as an intermediary. An initial conversation with the MP did not proceed very well: he was not sure that anybody should be talking about 'peace and dialogue' while 'everywhere in the streets' there were dead bodies. His immediate concern was how to deal with the need among his constituents for decent burial of their dead.⁷¹

Kisumu had suffered a heavy death toll as a result of police response to the wave of looting and arson that followed the announcement of the election results. It was the conversation with the Kisumu MP that spurred CCP to respond to the concern for decent burials. Within hours, Ibrahim had initiated a conversation that led to a grant of about USD 10,000 from the American Friends Service Committee (Quakers), channelled through NPI-Africa.⁷² This money was distributed (through a team of community-based peacebuilders answerable to NPI-Africa on behalf of CCP) among people in the critically affected cities of Kisumu, Eldoret, Nakuru and Nairobi, a practical initiative deeply appreciated by the beneficiaries. In Eldoret, the orderly process of burial marked some tentative coming-together of the several estranged communities.

⁷¹ Wachira, interview.

⁷² Ibrahim Abdi. Interview, PACT-Kenya Offices, Nairobi, May 21, 2009.

An offshoot of this initiative was the building of rapport with some of the Members of Parliament, particularly in Nairobi, aiding the development of the Nairobi Peace Forum process.

Flowers for Peace: *The Flower Memorial*

Another aspect of mourning and healing emanated from the Open Forum, providing testimony to the variety of cultures, perspectives and opinions that converged within CCP. A participant in the Forum, Saba Douglas-Hamilton, from Kenya's European community proposed the idea of using flowers as an expression of mourning and remembering. Uhuru Park, located just across the street from the Serena Hotel, was chosen as the site for the Flower Memorial. This choice was both symbolic and problematic. A sub-section of the park was known as 'Freedom Corner'.⁷³ Since the onset of the crisis, the entire Park had been sealed off by heavily armed police to ward off attempts by Odinga and ODM to hold a massive rally and to swear in Odinga as 'the people's president.' For this reason, the park was contested space and politically significant.

After approximately two weeks of negotiations with the Government (during which truck-loads of already donated flowers had to be preserved in cold storage!) at one point requiring the direct intervention of the Minister of Internal Security, permission was finally granted to erect a flower memorial at Uhuru Park. In the meantime, a temporary indoor memorial had been constructed in a Nairobi church

⁷³ Freedom Corner came into being following the efforts of now Nobel Laureate Wangari Maathai to stop the destruction of the park by the then Moi government. The corner then became popular with democracy activists in the 1990s.

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Apart from media appearances appealing to fellow youth to shun violence, CYP organized multi-ethnic residential neighbourhood meetings, hosted sports tournaments and music events--even in the midst of the prevailing despondency, and visited displaced people around Nairobi.

where a Night Vigil was held. After permission had been granted, a team of volunteers set about building the memorial in 'Freedom Corner', comprising a combination of pictures mounted on a billboard, and flowers--mostly white roses.⁷⁴

During its 'inauguration', CCP members led the way, laying the flowers onto the memorial. Within a matter of days, the memorial was attracting people from all walks of life including politicians and the police, all of whom brought flowers and respectfully laid them onto the memorial. Women, under the banner of Concerned Women for Peace, organised a procession from the Serena Hotel to the memorial, led by Ibrahim, Maendeleo ya Wanawake's Rukia Subow, and the renowned athlete, Tecla Lorupe. Flowers were also laid at select sites in the towns of Kisumu and Eldoret, including at the site of the burnt church, the latter event coordinated by General Opande

Other Grass-roots Processes

Throughout the crisis, most of the severe violence was concentrated in urban areas, where poverty struggled immediately adjacent to privilege. One of CCP's sub-groups, the Concerned Youth for Peace (CYP), brought together enthusiastic young people from both middle class and low-income estates of Nairobi. Apart from media appearances appealing to fellow youth to shun violence, CYP organized multi-ethnic residential neighbourhood meetings, hosted sports tournaments and music events--even in the midst of the prevailing despondency, and visited displaced people around Nairobi.

⁷⁴ See www.douglas-hamilton.com/Site/flower-power/index.html for excellent pictures of the Flowers Memorial

The group also organised a major and well-attended Night Vigil in Nairobi that brought together key people within and beyond CCP. Amidst the chaos and carnage, the Nairobi Night Vigil created a space for slum youths (the most likely perpetrators and victims) to come together and discuss their concerns. Dialogue was opened by the CCP Core Team during which young people shared the horror of their experiences and their hopes for something better than more bloodshed. Counselling was offered to youth who expressed a need for it. Pastors prayed, and the CCP Core Team encouraged all present to preach peace everywhere.⁷⁵ It was at this vigil that the initial Flower Memorial was displayed as negotiations for its outdoor construction at Uhuru Park continued. When permission for the construction of the Flower Memorial in the Park was finally granted, members of the CYP were available to provide the necessary labour.

Under the leadership of Tom Oketch, a civil society activist and resident of Nairobi's Kibera area, the expanding Nairobi Peace Forum--District Peace Committees web of community activism expanded its efforts before and after the signing of the eventual National Accord on February 28.⁷⁶

Kenyan Veterans for Peace (KVP) formed when a group of 150 military veterans attended a session of the Open Forum. Their immediate concern was organizing for peace in the residential neighbourhoods mostly affected by the violence. An aspect of the violence involved the forceful occupation of properties by tenants and refusal to pay rent. As their contribution to the peace effort,

⁷⁵ Mercy Gichangi, Interview, NPI-Africa Offices, Nairobi, June 4, 2009. Ms. Gichangi was Coordinator of CYP.
⁷⁶ Ibid.

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the KVP organized tenant/landlord dialogue and other grassroots activities to assist people who had lost their homes and livelihoods.

Conclusions: *Analysis and Learning Points*

Which, if any, insights and lessons can be drawn from the response of the Concerned Citizens for Peace to Kenya's post-election ethnic violence? Were the successes of the CCP initiatives idiosyncratic to one specific sequence of events and actors? Or do they offer potential templates or models that might help peace practitioners in other places to engage creatively with emergent risks of violence whether of ethnic or other origins?

Certainly, some of the situational elements of the CCP response in Kenya were unique and not readily replicated elsewhere: e.g., the immediate participation in CCP of internationally recognized mediators who had worked to resolve terrible conflicts elsewhere in Africa (Sumbeiywo, Opande, and Kiplagat); the pre-existing positive relationships among these three and the two professional and experienced peacebuilders (Ibrahim and Wachira); and the pre-existing close relationships between the actors and the eventual chief mediator, Kofi Annan. Kiplagat's role as a connector in this process was also unique.

Politically and ethnically motivated conflicts are generally supported by the powerful and/or wealthy parties whose interests they serve. Animosity rooted in historic injustices and injuries easily explode with the slightest provocation. And the efforts by a victimized populace, seeking to protect itself from destruction are always hamstrung by the desperate

lack of funds. It is against these overwhelming odds that peacemakers and peacebuilders must prevail. Nevertheless, some of the CCP strengths and decisions that yielded peacebuilding successes for Kenya may provide inspiration for further innovative peacebuilding work elsewhere in future. Indeed, CCP was a major inspiration to the work of the Civic Forum in Ghana that worked to avert bloodshed during the tense, drawn-out, violence-threatening general elections of December, 2008.

The Kenyan situation comprised an extensive accumulation of grievances and antagonisms emanating from a history of colonial, political, and economic injustices. These often acquired ethnic undertones, cyclically excited and incited at every election. Certain ethnic groups were perceived to enjoy privileged power and position, advantages craved by others. Many years of political and economic mal-governance had impoverished the country and heightened the sense of political and economic exclusion. Kenya's general elections of December, 2007 exposed and activated all of these latent and overt antagonisms.

In the end, however, a crisis response such as the one undertaken by the CCP emanates from a deeply held urge to mitigate and manage imminent and emergent violence, fully aware of the inability to deal immediately or conclusively with the underlying issues inherited from history. Nevertheless, without intervention, Kenya's violence could have deteriorated into total collapse. The possibility or likelihood of then addressing the issues bequeathed by history could have been overwhelmed. Interventions such as the one by the CCP can be understood as part of an 'enabling environment' within which to resist self-destruction and within which to focus on the recognition and resolution of problems. The challenge is

always how, in 'peace time', to sustain the urgency needed to address the fundamental justice issues so as to avoid the violence next time.

The community of peacebuilders in Kenya had sensed the brewing unease prior to the elections, and had worked to prepare communities for peaceful voting in 2007. But this effort proved insufficient to ward off the ensuing crisis. And when the country exploded in violence, peacebuilders responded immediately by forming the CCP platform. Within twenty-four hours after the onset of violence, CCP:

- 1) *Identified peace* - an end to the violence – as the country's greatest need and primary priority, and dialogue as the best strategy to rapidly facilitate that peace;
- 2) *Initiated* a web of local and international people who could mobilize outside support and influence Kenya's conflicting government leaders;
- 3) *Enjoined the peace* - promoting cooperation of television, print, and radio media;
and
- 4) *Took a counter* - intuitive leap of faith to open the CCP process to broad participation, by inviting all concerned Kenyans to combine and mobilize efforts through the Open Forum.

Learning Points

Recognition of the Moment: An ability to recognize that Kenya had arrived at a moment of extreme danger sprang from the confluence of long experience, imbibed theory and well honed intuition. The CCP principals, with experience from other severe African conflicts, understood that Kenya was at a tipping point, and that quick action was needed. Election campaigns function as polarizing forces; in states lacking

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CCP founders and members share a deeply held concern for 'truth' and 'justice', but were convinced that Kenya's immediate need was for the termination of violence and that respectful dialogue was the key to the possibility for truth and justice.

strong responsible and transparent institutions, election campaigns are carried out in a high risk environment. Within hours after the onset of the crisis, analysis indicated that Kenya had already fulfilled an estimated 80% of the conditions that characterize full-blown civil war. CCP was therefore driven by a sense of urgency, to mobilize swiftly and to take bold action in the hours immediately before and after the announcement of the contentious election results. On their own, the CCP founders acted to invite Archbishop Desmond Tutu, to engage the Sierra Leonean President Tejan Kabbah in shuttle diplomacy, and to appear on television to speak directly to the Kenyan people. The CCP recognized immediately that external intervention would be necessary to address the divisions in the country.

Compass Orientation: Without a sharply-defined sense of mission, even great energy and expertise is ineffective. In the midst of sudden violent crisis, how can peacemaking and peacebuilding be mobilized? During Kenya's emergency, some argued that the CCP should first have pursued 'truth' and 'justice', instead of defining its mission as peace-through-dialogue. The startlingly fruitful contributions of the Concerned Citizens for Peace, combined with the gratifyingly rapid resolution of the post-election ethnic violence, support CCP's (and the authors') convictions that everything has its proper time; Kenya's moment of a rapidly-accelerating crisis called for immediate measures to arrest the descent to total disintegration. This is both a theoretically sound and a practically grounded argument. CCP founders and members share a deeply held concern for 'truth' and 'justice', but were convinced that Kenya's immediate need was for the termination of violence and that respectful dialogue was the key to the possibility for truth and justice. That the key antagonists would eventually sit down and, in a matter of weeks, agree to share power without first insisting on the actual truth of the electoral debacle, seemed to make the point that CCP made repeatedly:

no innocent Kenyan had to die, certainly not on behalf of their leaders. At some point, a more deliberate engagement between respective civil society communities which espouse peace, justice, and truth from a variety of perspectives, would be helpful in clarifying theoretical assumptions and practical applications. Here the quest is not for blind 'co-operation' or capitulation; it is a quest for a more nuanced appreciation of multiple points of view and approaches.

Years of Preparation: Creative capacity for crisis response emerges from decades of work and commitment. Jointly and separately, the CCP founders and other CCP members represent years of preparation and investment: i.e., the development of networks and relationships; training, theoretical grounding and reflection in conflict transformation and peacebuilding; investment in skills-building; and experience in actual conflict resolution work. Lederach posits the importance of being long-term strategic (investing in capacity, relationships, networks, resources, etc., for dealing with situations on the long-haul) and short-term responsive (ability to deploy within a crisis situation).^{77 78} Long-term development and preparation form a significant portion of the capacity for rapid, effective crisis response.

Wachira recalls a conversation with a quartet of the former heads of states at the Serena Hotel during which President Mkaapa argued reflectively that Kenya was fortunate to have a corps of dedicated and experienced peacebuilders such as those active within CCP. The speed with which CCP deployed and the demonstrated ability to connect many pieces of collective initiative, appeared to happen naturally, almost effortlessly, thus masking years of preparation, experience, relationship

⁷⁷ Lederach, *Building Peace*.

⁷⁸ Lederach, *The Moral Imagination: The Art and Soul of Building Peace* (New York, Oxford University Press. 2005).

A society's or nation's preparedness for the danger of ethnically- or politically-driven violence should not rest on the shoulders of only a few people.

building which the team was drawing on.⁷⁹ Intervention by peacebuilders in a crisis situation is informed by long-term investment and preparation, empowering actors to make strategic choices in moments of crisis.⁸⁰ A society's or nation's preparedness for the danger of ethnically- or politically-driven violence should not rest on the shoulders of only a few people. Capacity-building, in the form of training for conflict resolution, mediation, and peacebuilding, can prepare and empower the broader civil society for purposes of averting violence and contributing to the restoration of violated peace. Where citizens develop a peace-empowering network of relationships before a crisis arises, they can mobilize toward peaceful resolution when conflict erupts.

Inclusive Web of Improbable, Strategic Actors: At the launch of CCP, the five initiators called on Kenyans to join and to contribute their thoughts, abilities, and connections toward a resolution of the crisis. This was a risky move, a leap of faith. The five had no way of knowing who would respond to the call or what their motivations might be. But they believed that inclusive participation, transparency, and an appeal to the better instincts of people trumped the option of exclusion and

⁷⁹ We owe this point to John Paul Lederach; email exchange with Wachira, November 2009.

⁸⁰ It is recognised here that even with years of preparation, CCP was not able to escape the perception problem associated with working in one's own divided society. Thus, even though CCP's founders tried to display impartiality and tried to avoid the perception of being aligned with any particular political constituency or "side", questions were still asked: Kiplagat, a key anchor of the CCP had served in both the Moi and Kibaki administrations as part of his long and distinguished public service career; so had Opande and Sumbeiywo. Questions were therefore raised about the impartiality of the group. The five also had to contend with the ethnic geography of the conflict. It helped that they all came from different communities with Ibrahim (the Convenor) coming, as earlier indicated, from a 'periphery group' not directly involved in the conflict. Within the group of five itself, and in the wider CCP movement that formed around it, there was never any doubt, even a discussion, of the impartiality of any of the individuals. Everyone brought a commitment that was seen to relegate whatever political sentiments they may have had to the background.

the 'control' of closed doors. This pivotal decision paid handsome dividends. Within a matter of only several days, an elaborate web of strategic actors had emerged, energizing each other, and clustering around Working Committees. Each committee engaged people who were involved in their own webs of relationships and networks: in business, in the church, in the mosque, in academia. In this way, CCP was true to its claim; 'Giving a Voice to Kenyan Citizens to Engage and Contribute in the Creation of Peace and Hope', and its vision of 'Creating a citizen's movement that will create [a] just peace for all.' Meeting only behind closed doors would have thwarted such a claim. It would also have stymied the emergence of the movement which CCP became, with its ability to forge and to create new webs from existing ones.

This 'web of webs' served as a CCP facility, generating the 'Citizens' Agenda for Peace.' The Open Forum itself gave birth to and empowered citizen coalitions (Concerned Kenyan Writers, Concerned Youth for Peace, Veterans for Peace, Concerned Women of Kenya, etc.). While the respective working groups each organized around principles of responsibility and transparent accountability, the 'web of webs' approach freed their efforts from the disabling constriction of rigid structure. The Open Forum became the transparent, empowering hub of the CCP web, the common space within which and from which everyone was acting for peace. This posture attracted talented and strategic thinkers, organizers and doers, the energy and enthusiasm of the young, the reflective wisdom and restraint of the wizened and experienced, the connections birthed by business and professional contacts over the years, the theoretical grounding and analysis of professionals. The Open Forum offered recognition and encouragement that boosted morale. The CCP process,

The Open Forum offered recognition and encouragement that boosted morale.

by combining principles of chaos and order, resonated significantly with Hock's idea of a 'chaordic' network⁸¹ and with Ricigliano's description of a 'network of effective action' that shares purpose and principles of conduct, decentralizes and self-organizes, empowers its members with plasticity of form, and includes all actors.⁸² Lederach has written extensively about the 'relationship-centric approach to constructive social change.'⁸³ 'The centre of building sustainable justice and peace is the quality and nature of people's relationships.'⁸⁴

CCP's relationships with the media proved to be strategically critical to all of the ensuing activities. The media placed CCP centre stage during Kenya's critical moment, legitimizing hope for peace when the country's imagination was afire with violence. Responses from the donor community were more circumscribed, but at critical moments timely largesse was forthcoming. However, this confluence of dynamics, had as much to do with the CCP process as it had to do with the nature of the donor community.⁸⁵

81 Coined by Dee Hock, the term 'chaordic' is a portmanteau that suggests that 'chaos' and 'order' can co-exist in a helpful balance. See Dee Hock, *Birth of the Chaordic Age* (San Francisco, CA; Berret-Koehler, 1999).

82 Robert Ricigliano, "Networks of Effective Action," *Security Dialogue*, SAGE Publications, Vol. 34(4), 2003, pp. 445-462. www.sagepublications.com

83 Lederach, *The Moral Imagination*.

84 Ibid.

85 CCP was rather ambivalent on how to approach the question of donors and funding. There was an aversion among the founders of a full-blown move to organise and raise funds, seeing this as likely to lead to unhealthy directions. This is perhaps the one area in which the Core Team exercised some firm power of decision-making towards caution regarding organizing and fund-raising. A key way out of this was to work with partner organizations that could raise and channel funds to CCP, among them NPI-Africa, IDRC, Oxfam GB, Global Coalition Against Poverty, etc. Modest but crucially timely CCP funding through NPI-Africa came from the United States Institute of Peace and the American Friends Service Committee. NPI-Africa sourced funds on its own behalf, some of which were used to support CCP's work. Crisis response funding to NPI-Africa came from ICCO and CORDAID (The Netherlands); CAFOD and Christian Aid (UK); Bread for the World (Germany); and Mennonite Central Committee- MCC (USA). Wachira interview.

Movement-Process/ Organization-Structure

CCP envisioned itself more as a movement and as a process, and less as an organization or structure. This self-perception enabled CCP to function in a fluid and inclusive manner, guided all along by the principles of and a commitment to non-violence, peace and dialogue. There were several discussions within the group regarding minimum organization that would have enabled CCP to solicit and receive funding; but there was reluctance among the founders to transform CCP into an organization. Available funding was channelled through organizations collaborating with CCP, thus freeing the Core Team from the need to manage funds. It was also felt that the spirit of voluntarism and commitment, central to CCP's work, could have been affected negatively by an infusion of money, requiring decisions on access and criteria of allocation. Happily, the relatively short-lived nature of the crisis meant that CCP was soon freed from having to make such decisions. A crisis of longer duration would definitely have required careful balancing between the movement-process and organization-structure options.

Focus on Multiple Levels and Actors: The connectivity generated in the Open Forum enabled CCP to intervene at multiple levels. CCP mobilized the public to halt the violence while urging politicians at all levels, at the same time, to resolve the crisis through dialogue; it engaged with the formal mediation process from the very beginning; it worked with public institutions to prevent the spread of the violence; it worked strategically with the media (television, print, radio, electronic, blogs, and SMS); it worked collaboratively with the private business sector; it supported local-level actions by key individuals and groups to avert and respond to the violence; and it offered practical support for mourning, confidence-building and healing. CCP worked at all levels

Available funding was channelled through organizations collaborating with CCP, thus freeing the Core Team from the need to manage funds.

of Kenyan society and across lines of tribe, ethnicity and religion.

Use of Strategic Analysis: The CCP's broad web of people provided conflict and political analysts with insights to formulate strategies, to anticipate not-yet-developed hotspots of violence, and to re-focus strategy when necessary in response to shifting realities. Excellent information and analysis enabled the group to reach early conclusions about possible resolution of the crisis (e.g., the realization that no legal or political resolution to the crisis could be obtained through a recount or re-tallying⁸⁶ of the presidential vote). CCP's early focus on ending violence through the promotion of dialogue was a strategy which subsequent analysis affirmed as valid. The 'Citizens' Agenda for Peace' publicized by CCP on January 9 was affirmed when the Kofi Annan mediation team reached similar conclusions on February 14. Throughout the national crisis and the related CCP response, the group benefited from carefully considered analysis that embraced the complexities of the Kenyan conflict.⁸⁷

Providing Space and Opportunity for Peace, Protection of Life: The CCP experience suggests that in conditions of chaos and crisis, people need space and time to think and to act in concert. In order to challenge the power of ethnic prejudice and division, people need opportunity to reaffirm their oneness, their tolerance, their need for freedom from violence and their need for each other. They need space and opportunity to exercise their social will, to contribute to their own self-preservation and that of others, and to express human solidarity by supporting those in need. In the midst of violent conflict, space for community initiative and leadership must be created; once such space is recognized and

⁸⁶ Reached in early discussions with professionals who knew something about forensic auditing.

⁸⁷ Ibid.

available, people can build networks of synergy, and create spontaneous contributions to the peace effort. 'Relational spaces create social energy Peacebuilding understands that relationships create and emanate social energy and are places to which energy returns.'⁸⁸

How can different political and civil society actors and organizations come together around a peace imperative? Can the lives of individuals be sacrificed for the greater goals of truth and justice? Who makes such decisions on behalf of innocent victims? The answer, we believe, has emerged many times when people are victimized by violence driven by ethnic division. Under such circumstances, the unifying force is – and should be – people's common need for human security, for freedom from violence, and the need to protect life, the first right without which all others are impossible, and the realization that the violence itself is the greatest enemy. The worst injustices and violations of human rights take place in an environment of chaos and violence.

Integration with the Official Mediation: CCP's easy, continuing access to and cooperative working relationship with mediator Kofi Annan and his team served as unusual assets to this non-governmental group of peace activists. CCP's integration into the formal peace process derived in part from prior connections between Annan and three of the five CCP founders. Opande, Sumbeiywo and Kiplagat had all become acquainted with Annan through their previous work; Annan and Opande had remained in close contact for years.⁸⁹ Opande therefore easily arranged for the entire CCP Core Team to meet with Annan shortly after Annan's arrival in Kenya. Over the next several days, the Core Team and Technical Committee conducted multiple briefings and offered the CCP's Citizens' Agenda and its rationale to Annan

⁸⁸ Lederach. *The Moral Imagination*.

⁸⁹ Opande, interview.

Can the lives of individuals be sacrificed for the greater goals of truth and justice? Who makes such decisions on behalf of innocent victims?

and his team.⁹⁰ At Annan's request, mediation-experienced Sumbeiywo recommended ground rules for the Kenyan mediation process.⁹¹ These trusted relationships resulted in the CCP Core Team being consulted by the formal mediation team on various issues, and helped insure that the eventual National Accord was relevant to the specifics of the Kenyan conflict. Together the formal negotiation agenda and the final Accord, signed February 28, 2008, bear strong similarity to the CCP's 'Citizens' Agenda for Peace'.

The Grasp of Serendipitous Opportunities: Serendipity suggests 'accidental' or 'lucky' discoveries. Wachira elaborates: serendipity implies a proactive alertness to hoped-for, yet unplanned, opportunities. Serendipity 'finds us because we are searching in its vicinity.'⁹² Lederach (2005) cites the gift of peripheral vision (as opposed to a tunnel vision) that enables one to move creatively and to notice opportunities along the way and to the side.⁹³ The readiness and the wisdom to grasp serendipitous opportunities requires thorough analytic preparedness, a sense of the future, and the instantaneous recognition of an opportune moment. To respond to serendipitous opportunity requires the ability to envision outcomes for which the paths are not yet clear or available.⁹⁴ The readiness to grasp serendipitous opportunities arises from the wisdom to patiently trust the process-nature of peacebuilding, rather than attempting to control all events. CCP was blessed with numerous serendipitous opportunities: the presence of Tejan Kabbah at the Serena Hotel when the rioting and violence began; the 'accidental' encounter with ODM leader Raila Odinga

90 Sumbeiywo, interview.

91 Karuru, interview.

92 Wachira (2001) "The Politics of Evaluation of peacebuilding: A Practitioner's Reflections" Keynote Address to the Conference, *Towards Better Peacebuilding Practice*, Soesterberg, The Netherlands, October 24, 2001.

93 Lederach, 2005.

94 Wachira. Interview, University of Notre Dame.

in the beauty salon of the Serena at the moment when CCP needed to deliver a copy of the CAP to him; etc. The Open Forum itself led to many serendipitous opportunities and the synergistic convergence of people and ideas.

Strategic Location: The Serena Hotel served, serendipitously, as a strategic, vital base for CCP initiatives. The hotel's location and history afforded CCP the opportunity to meet and interact with a variety of influential actors, including Odinga and Kibaki--the presidential protagonists; members of the international and diplomatic communities; representatives of the media; the CCP founders; peace activists from all over Kenya who connected with the Open Forum, in addition to many others. For those actors who needed a base, the Serena was both central and secluded from the reigning chaos in the surrounding city. Its five-star and rather exclusive status ensured that only people with purpose and commitment walked its corridors.⁹⁵ Kofi Annan's choice of the hotel for his mediation effort added to the strategic nature of the location.

Preventive Action: At a point when rioting violence threatened to engulf the capital city of Nairobi, CCP worked with the Internal Security Ministry to mobilize peacekeeping in the city. This collaboration led to the formation of the Nairobi Peace Forum; the formation of District Peace Committees and various training and capacity-building activities. As the schools and universities prepared to re-open, CCP held consultations with the Ministry of Education, spoke to the national gathering of school heads, met with vice-chancellors

95 This five-star status presented a challenge due to the cost of services at the hotel. In one rather hostile meeting between the CCP team and a visiting regional delegation and their local hosts, the question was asked, rather suggestively: "Who is paying for you to be at the Serena Hotel anyway?" In reality, CCP founders used their personal money in the early days and joked about the fact that the hotel was so expensive that they often could only afford a cup of masala tea and samosa for entire days. Kiplagat took to joking with visitors to not dare offer to buy lunch unless they really meant it, for the group was likely to say yes! Wachira, interview.

of all public universities, and organized a workshop for student political leaders. In direct consequence, violence did not break out in the universities, as had been feared. Two intense meetings with ethno-vernacular FM radio station owners and presenters were held, urging them to use their radio broadcasts as tools for peace rather than as firebrands for violence.

Leadership and ‘Anchor’ Personalities: Leadership is essential in crisis situations. The situation required that a few individuals step forward, initially, to form and build a movement, a corps of peacebuilders. Without that initial leadership, the CCP movement would probably not have been formed, and the actors would have remained isolated. Without the response of the corps of peace-minded actors, the five initiators would have remained isolated and ineffective.

In the business world, shopping malls feature the ‘anchor tenants’, i.e., the key business or businesses in the mall that not only occupy significant space, but are also likely to attract customers. CCP had its ‘anchor personalities’ most notably the iconic and silver-haired Kiplagat, and also Sumbeiywo and Opande. Ibrahim describes these people as Kenyans ‘whose souls have settled’, meaning that they are no longer driven by the need to be seen and recognised; their achievements have long been recognized and appreciated. These anchor personalities became part of the easily recognisable CCP brand. It was therefore easy to associate Kiplagat and others with ‘peace’ and ‘dialogue’ each time they appeared in the media. Such anchor personalities can help focus an initiative and build the ‘recognizable identity’ of its message.

Final Remarks

We suggest that fundamental peacebuilding principles underlay the strategies and decisions of the CCP Core Team, such as preparedness, non-violence, the primacy of relationships, tolerance and respect for all, inclusiveness, inter-group dialogue and cooperation, empowerment by self-determination, reconciliation, continuing analysis and ready adaptation to quickly changing circumstances, alertness to unexpected opportunities, and working at multiple levels simultaneously. Each of these fundamental values can be prepared for and are applicable in any setting.

However, as indicated, there are circumstances in the Kenyan crisis and the response by the CCP and others that were peculiar to the situation. Even though these may be hard to replicate in other crises, we hope that the lessons for this story can spur creativity in other settings. It is our hope, therefore, that others in other places will benefit from the lessons of the CCP. Better still, it is our hope that the experience of Kenya highlights the importance of preparedness and long-term investment in networks, relationships, skills and resources for peacebuilding. We are keenly aware that Kenya’s neighbour, Sudan, is faced with daunting electoral and referendum processes that are almost certain to spark violence in both the North and the South. It is our hope that civil society, religious leaders and politicians can begin to engage proactively with the anticipated challenges.

Finally, as Kenya's next national election, in 2012, quickly approaches, vigilance and caution is called for. We hope that the lessons of the violence in 2008 and its consequences for ordinary Kenyans are starkly clear. At the level of the international community, we suggest a serious reconsideration of the concepts of 'free and fair elections' and 'election monitoring'. These concepts should be expanded to include monitoring of a wide range of factors in the entire period between elections. Finally, we also hope that the lessons from the intervention of CCP and other actors can provide inspiration for heightened awareness of the need for preparedness and infrastructure at all levels of society to deal with political crises and violence.

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Concerned Citizen for Peace (CCP) was officially launched by five peacemakers at a media conference held on December 31, 2007, just a day after the onset of the violence following the announcement of the contested presidential election results. The five initiators immediately established an operational base in Nairobi's Serena Hotel where they were joined in the following days by a corps of Kenya's peacebuilding community, including professionals, religious leaders and community organizers. For the next three months, the hotel became synonymous with efforts to save Kenya as it was chosen to host the official mediation process led by former UN Secretary General, Kofi Annan.

In preliminary fashion, this document recounts the launch and the subsequent activities undertaken by the CCP in response to Kenya's post-election upheaval in early 2008. Presented here in story form, it is to be considered, firstly, a 'work in progress' and, secondly, an 'invitation' to participants in and observers of the CCP process to submit additional stories, impressions, activities, and analysis as part of an open-ended chronicle of Kenya's 2008 post election crisis experience.



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Concerned Citizens for Peace



NPI-Africa

A Peace Resource Organisation

TIMING MEDIATION Initiatives

I. William Zartman and Alvaro de Soto

STALEMATE

AWAY OUT

RIPEN

FUTURE MEDIATOR

TIMING MEDIATION INITIATIVES

STEP 1: ASSESS THE EXISTENCE AND PERCEPTION OF A STALEMATE

- **Identify Objective Indicators**
 - Determine If a Stalemate Exists
 - Assess the Extent of Hurt
 - » *Analyze Costs That Produce Pain*
 - » *Recognize That Losses Are a Sign of Pain*
 - » *Evaluate Changes in Leadership*
 - » *Assess Changes in Allies*
- **Identify Subjective Indicators**
 - Evaluate the Meaning behind Official Statements
 - Assess Unofficial Statements in Public Media

STEP 2: ASSESS THE EXISTENCE AND PERCEPTION OF A WAY OUT

- **Identify Objective Indicators**
 - Evaluate Official Statements
 - Assess Preliminary Signs of Cooperation
- **Identify Subjective Indicators**

STEP 3: INDUCE RECOGNITION OF THE STALEMATE AND A WAY OUT

- **Induce Recognition of Stalemate and Pain**
 - Directly Encourage the Perception of a Stalemate
 - Indirectly Encourage the Perception of a Stalemate
- **Induce Perceptions of a Way Out**
 - Sell Solutions
 - Encourage Perceptions
 - Display Creativity

STEP 4: RIPEN THE STALEMATE AND A WAY OUT

- **Ripen the Stalemate**
 - Use Diplomatic Measures
 - Employ Economic Measures
 - Apply Military Measures
- **Ripen the Attractiveness of Negotiating**
 - Use Diplomatic Measures to Reframe the Conflict
 - Declare a Willingness to Engage
 - Determine Prenegotiation Functions

STEP 5: POSITION ONESELF AS A FUTURE MEDIATOR

NOTE: Steps are not sequential. They overlap and should be performed throughout the entire process.

Timing Mediation Initiatives



TIMING MEDIATION Initiatives

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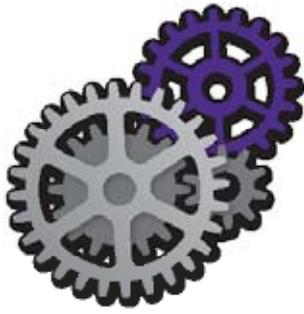
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Introduction

If it is to succeed, a mediation initiative cannot be launched at just any time; the conflict must be ripe for the initiation of negotiation. Parties resolve their conflict only when they have to do so—when each party’s efforts to achieve a unilaterally satisfactory result are blocked and the parties feel trapped in an uncomfortable and costly predicament.

The idea of a ripe moment is by no means new or otherwise unfamiliar to diplomats. “Ripeness of time is one of the absolute essences of diplomacy,” wrote John Campbell more than thirty years ago. “You have to do the right thing at the right time.”¹ Two years earlier, Henry Kissinger had recognized that “stalemate is the most propitious condition for settlement.”² Chester A. Crocker, U.S. assistant secretary of state for Africa between 1981 and 1989, said of the Namibian dispute, “The second half of 1987 was . . . the moment when the situation ‘ripened.’”³ Conversely, practitioners often say that mediation is not advisable because a conflict is not yet ripe. In mid-1992, in the midst of ongoing conflict, the Iranian deputy foreign minister noted, “The situation in Azerbaijan is not ripe for such moves for mediation.”⁴

The concept of a ripe moment centers on the conflicting parties’ perception of a “mutually hurting stalemate” that—optimally—is associated with an impending, past, or recently avoided catastrophe. When parties find themselves locked in a conflict that they cannot escalate to victory and this deadlock is painful to both of them (although not necessarily in equal degree or for the same reasons), they seek an alternative policy, or a “way out.” The catastrophe is an indication of pain that might increase sharply if prompt action to alter the situation is not taken. The stalemate can be viewed as a plateau (a flat and unpromising terrain without relief), and the catastrophe as a precipice (the point where things suddenly and predictably get worse). A more dynamic metaphor is

that of the moment when the upper hand slips and the lower hand rises, both parties moving toward equality, with both movements carrying pain for each party.

Certain elements are necessary for ripeness to occur. In the first place, all conflicting parties must perceive a stalemate. Yet, while ripeness is a matter of perception, that perception is usually related to objective conditions. These can be brought to the conflicting parties' attention by a mediator or an opposing party if they are not immediately recognized by the party itself, and they can be resisted so long as the conflicting party refuses or is otherwise able to block out their perception. It is the perception of the objective condition, not the condition itself, that makes for a mutually hurting stalemate. If the parties do not recognize that they are in an impasse, a mutually hurting stalemate has not (yet) occurred; if the parties do perceive themselves to be at an impasse, no matter how flimsy the evidence, a mutually hurting stalemate exists.

The other element necessary for a ripe moment is also perceptual: a sense of a way out. Parties do not have to be able to identify a specific solution, but they must have the sense that a negotiated solution is possible and that the other party shares that sense and the willingness to search for a solution. Without a sense of a way out, the push for resolution associated with a mutually hurting stalemate leaves the parties with nowhere to go.

Ripeness is not self-implementing; it is only the necessary but insufficient condition for the inauguration of negotiation or mediation, and so it presents an opportunity for mediators. Ripeness must be seized, either by the parties or (if not) by a mediator. Yet, the existence of ripeness guarantees no results by itself. Not all ripe moments are seized and turned into negotiations; implementation of mediation depends first on recognition of the ripeness and then on exploitation of the moment.⁵ Ripeness is therefore not predictive in the sense that one can forecast when a given situation will become ripe. It is predictive in the sense of providing a point at which to identify the elements necessary (if not sufficient) for the productive inauguration of negotiations. As such, the state of ripeness is of great value to policymakers seeking to know when and how to begin a peace process.

The absence of ripeness is not a valid reason for inaction. Prospective mediators (and the parties themselves) can develop a policy of ripening,

cultivating both objective and subjective elements of ripeness if these elements do not appear on their own. If ripening is unproductive, the fallback position for the prospective mediator is positioning, making sure the parties realize that the mediator is present and available whenever they are ready to listen. Two challenges are posed by this notion: how to recognize ripeness and what to do about it. Finding a ripe moment requires conducting research and intelligence studies to identify objective and subjective indicators of ripeness. To establish whether ripeness exists, prospective mediators should regularly study objective facts as well as subjective expressions of pain, impasse, and inability to bear the cost of further escalation related to the objective evidence of stalemate, casualties, and material costs, along with expressions of a sense of a way out.

This toolkit lays out the steps mediators can take to recognize ripeness themselves, to foster the parties' perception of ripeness, and to ripen the conflict. Step 1 describes how the mediator should assess whether a mutually hurting stalemate exists and, if it does, how painful it is. Step 2 focuses on assessing the parties' perception of a way out. In each of these steps, the mediator should assess both objective conditions (such as rising costs of conflict for the parties) that testify to the existence of stalemate, pain, and possibilities of a joint search for an outcome, and subjective indicators (such as official statements by the parties) that show that the parties actually perceive the stalemate, the hurt associated with it, and the possibility of negotiations. Step 3 presents measures the mediator can take to induce the parties' perception of a stalemate and a way out. Step 4 explains how to enhance objective conditions for ripeness, creating a stalemate and the pain associated with it as a basis for further efforts to encourage the perception of the new facts. If ripening is not possible, a mediator should take Step 5, which involves the mediator positioning so that the parties recognize that they can turn to the mediator for help when the situation eventually becomes ripe.

A Word to the Mediator

The following material is written for all types of mediators, to be used and adapted as circumstances and capabilities demand. However, mediators come in different shapes and sizes, and this affects what they can do. Great-power mediators are guided by their own interests, the most important of which is the need to see an end to the conflict. Conflicting

parties, in turn, are governed as much by the importance of demands of their relationship with the mediator as by their interests directly in the conflict. Thus, a more powerful state can be a “mediator with muscle,” playing an active role, serving as a “mediator as manipulator” with the means to sweeten the outcome and restrain the conflict if necessary. These mediators can have a useful role in ripening the conflict objectively and in changing the parties’ perception of it, but they should avoid imposing their own solutions, leaving ownership of the solution firmly in the hands of the parties. States of course do not mediate; their agents do, and a great-power mediator must be careful to ensure that the mandate under which he or she operates is clear and that the various agencies at home are fully behind the mission.

Non-governmental organizations (NGOs) and weaker states have the advantage of being less suspect for their interest in mediation. Thus, they can urge awareness of the stalemate and its associated pain and can propose solutions in a more disinterested way. However, they have little or no power to alter events, and relationships with the conflicting parties may be of less interest to them than to great-power mediators.

The United Nations is located somewhere between the two, but has an additional constraint: UN mediators are fully dependent on the mandate given them by the UN Security Council. The UN secretary-general may initiate a mediating process on his own but only at his own risk and must not get too far out ahead of the Security Council. The institution of “friends” of the secretary-general and his special representative (SRSG) is a particularly helpful device to ensure that support. The SRSG can threaten to withdraw the mediation if the parties do not cooperate, but as with the NGOs and small states, that threat is about the only pressure available. Mediation is 90 percent persuasion in any case.

Whatever the mediator, if there is more than one the most important imperative is coordination! Multiple mediators can easily become competing mediators, undercutting each other and weakening their position (while expecting to strengthen it) with the parties, who can play them off against each other in an outbidding process. Multiple mediators can reinforce each other, on the condition that they agree on a lead mediator and consult among themselves frequently. NGOs and small states can make contacts and provide ideas that large states cannot, and they deserve attention from the lead mediator.

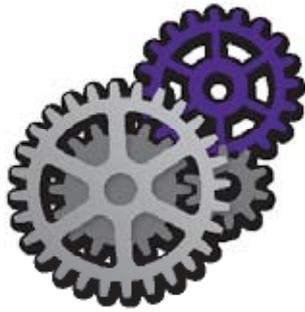
The Peacemaker's Toolkit

This handbook is part of the series *The Peacemaker's Toolkit*, which is being published by the United States Institute of Peace.

For twenty-five years, the United States Institute of Peace has supported the work of mediators through research, training programs, workshops, and publications designed to discover and disseminate the keys to effective mediation. The Institute—mandated by the U.S. Congress to help prevent, manage, and resolve international conflict through nonviolent means—has conceived of *The Peacemaker's Toolkit* as a way of combining its own accumulated expertise with that of other organizations active in the field of mediation. Most publications in the series are produced jointly by the Institute and a partner organization. All publications are carefully reviewed before publication by highly experienced mediators to ensure that the final product will be a useful and reliable resource for practitioners.

The Online Version

There is an online version of *The Peacemaker's Toolkit* that not only presents the text of this handbook but also connects readers to a vast web of information. Links in the online version give readers immediate access to a considerable variety of publications, news reports, directories, and other sources of data regarding ongoing mediation initiatives, case studies, theoretical frameworks, and education and training. These links enable the online *Toolkit* to serve as a “you are here” map to the larger literature on mediation.



STEP 1

Assess the Existence and Perception of a Stalemate

Identify Objective Indicators

Objective indicators provide evidence of the existence of a stalemate and pain associated with it. Objective indicators can include events external to the actions of the parties, as well as the behavior of the parties themselves.

Determine If a Stalemate Exists

Stalemate means parties are caught in a conflict that they cannot win at an acceptable cost: They cannot escalate their way to victory.

Are the conflicting parties stuck in a stalemate? Is the conflict active or merely frozen in inactivity? Have there been attempts by either side to escalate its way out of the stalemate by military—or even political—means? Have those efforts produced no clear outcome except to show that winning is impossible? In these cases, the message is evident and the evidence of a mutual stalemate is direct. The best evidence for a desire to escalate is an attempt to escalate, but the parties may also announce plans, make threats, leak intentions, and so on. But that is not enough; it is the failure of the escalation (“fall back”) that produces the hurting stalemate.

Israel and Hamas escalated their conflict in Gaza in early 2008 until they saw that neither could prevail over the other; an informal cease-fire and secret negotiations ensued; the cycle was repeated again at a higher level of intensity at the beginning of 2009, with the stated purpose, on the part of Israel, of restoring the “deterrent capacity” it had earlier lost.

In 1965, India and Pakistan launched a series of escalations over the Rann of Kutch and Kashmir that demonstrated that Pakistan could not take Kashmir by force and India could threaten but not take Lahore; exhausted, both sides fell back into a cease-fire demanded by the United Nations and then a full truce mediated by the Soviet Union.

In Angola in 1986, both the South African Defense Force and the Angolan army supported by Cuban troops attempted to change the battle line around Cuito Canevale and failed, setting the scene for negotiation.

In November 1989, a major offensive by the Frente Farabundo Martí para la Liberación Nacional (FMLN) failed to ignite a popular insurrection against the armed forces, leading it to conclude that negotiation was the only way out; the armed forces' failure to crush the offensive brought the El Salvador government to the realization that, after eight years of effort, it could not defeat the insurgents, leaving negotiation as the only way out.

The message of failed escalations is particularly clear if one indicator is combined with others; for example, if the efforts to escalate are costly and add to an already unacceptable burden that the escalation seeks to escape, or if the stalemated efforts begin to produce increased casualties—in other words, if there is clear evidence not only of a stalemate but of one that hurts (see the section “Assess the Extent of Hurt,” below).

In South Africa in 1990, newly elected National Party chair and prime minister F. W. de Klerk saw that the regime was no longer able to provide the white minority with security and prosperity, to contain and control the black majority, or to claim international acceptance and legitimacy, and that the cost of these failings was steadily rising.

Has one side made successful attacks in the conflict but then withdrawn to its previous positions? Such “escalations to call” (as opposed to “escalations to raise”) show the opponent that one party can escalate but does not want to and prefers to negotiate.

In the last year of the second Iran-Iraq war in 1988, Iraq repeatedly penetrated Iran and then withdrew, calling on Iran to negotiate an end to hostilities, which it then did. In the Cuban Missile Crisis in 1962, the United States maintained its blockade but reduced the perimeter, as it let a Russian ship not carrying missile parts pass.

Assess the Extent of Hurt

Hurt means that the parties are suffering some costs or losses—physical, financial, or less tangible—as a result of the stalemate. Although hurt is subjective, it is a response to objective conditions that “should cause pain if they would only realize it.” Both parties must feel hurt and stymied for a stalemate to exist, although it is rare that they feel so to the same degree. “Mutual” does not imply symmetry; it simply means that each party feels damaged by the stalemate. If one party hurts more than the other(s), it is a challenge to the mediator to bring them to focus on their own pain and not on the difference in the perceived degree of pain.

Analyze Costs That Produce Pain. Rising absolute costs are clear indicators of a painful stalemate if they do not produce results and if the imbalance between costs and results is noted in a public outcry. Are rising financial costs of the conflict evident?

Relative costs can indicate pain when measured against some standard. Are costs rising above an acceptable level, independent of their results? The acceptable level may have been proclaimed ahead of time in government statements or suddenly “discovered” as the costs rise. Are costs rising compared with expectations in relation either to anticipated outlays or to anticipated results? Results may be achieved, but not to the extent that the parties have led themselves or their public supporters to expect.

Opportunity costs, where conflict costs prevent other preferable expenditures, can also indicate pain. Are popular or necessary alternatives being dropped for lack of funds? Budget, construction, or programmatic discussions may indicate the elimination of items in times of belt-tightening.

Costs—absolute, relative, or opportunity—can be calculated using public information augmented by other sources; the costs themselves are hard statistics. The elements against which costs are compared, such as similarly acceptable levels and expectations, are also statistics, although probably less sharply advertised, and can be gleaned from public media, since they are the basis for public reactions.

Recognize That Losses Are a Sign of Pain. The same kind of reference points used to evaluate costs can be used in regard to losses: officially or unofficially expressed expectations and acceptable limits. As with costs,

both the absolute figure for losses and the gap between losses and expectations inflict pain. Are body bags and other measures of casualties that indicate the costs in human lives on the rise?

Rising U.S. casualties in Vietnam in the late 1960s and early 1970s, and the absence of decisive results, brought home to Washington and Hanoi the need to negotiate.

The makeup of casualties matters too: Not all body bags are equal. Is a crucial social or economic group suffering disproportionately? Again, expectations and limits come into the calculation.

When white body bags came back to South Africa from Angola in 1985–86, the ruling minority began to take notice and prepared to negotiate.

Rising numbers of refugees and internally displaced persons might indicate population losses for the home state or costs for the host state.

External events may be a source of losses. Have climatic disasters such as droughts and floods occurred and produced unexpected losses? Such events can make pursuit of the conflict difficult and change the combatants' chances for success. Such unanticipated losses (and costs) cause pain not only in the absolute sense but also relative to expectations, since they come—literally—out of the blue.

The 2005 tsunami caused heavy casualties to both sides (but particularly the rebels) in the war over Aceh in Indonesia, leading directly to the opening of negotiations under foreign mediation. The 1990 drought in southeast Africa caused heavy losses for the population of Mozambique and opened the way for the hurting, stalemated sides to begin negotiations mediated by Sant'Egidio and later the United Nations.

Climatic hazards do not automatically cause a mutually hurting stalemate, but they may harden the conflict. A potential mediator must carefully watch to see which way the winds are blowing on the ground.

The drought in the mid-1970s in the Horn of Africa brought Ogadeni refugees to Mogadishu to urge the Somali government to drive Ethiopians out of their lands.

Calculations of losses can be made using public information augmented by other sources; the weight of losses can be discerned from official statements and commentaries in the media. Hard data about first-level losses (i.e., data about the losses themselves) can generate second-level losses such as the loss of public confidence and support. Losses are more likely to be the subject of public demonstrations than are costs; such demonstrations indicate the objective extent of publicly felt pain.

Evaluate Changes in Leadership. Leadership changes can be second-level indicators of a mutually hurting stalemate, but interpreting such changes is not always a straightforward business. The replacement of a hard-liner with a soft-liner, or a rightist with a leftist, may be an unambiguous sign of recognition of the need to seek an end to the conflict. However, it may take a hard-liner or a leader with strong nationalist credentials not only to recognize that his or her country needs an agreement with the opponent but also to carry the body politic into a change of policy. Changes to a soft-liner or an accommodationist stance that do not produce the opening of negotiations can lead to a second policy reversal and a closing of the window of ripeness.

The replacement of Glafkos Clerides by Tassos Papadopoulos as Greek Cypriot leader as EU accession drew near in early 2004 drastically reduced prospects for a settlement of the conflict in Cyprus.

The change need not only be at the top; the removal of hard-line advisors or, in harsher systems, the repression of extremists provides incumbents with greater latitude to act on their own.

The advent to power of General Charles de Gaulle in 1958 brought France into negotiations with the Algerian National Liberation Front (FLN) to end a war that neither side could win militarily. The advent to power of another general, Dwight Eisenhower, in 1952 opened the Korean War to a productive turn of negotiations. The advent of a third general, Itzak Rabin in Israel in 1992, brought productive negotiations out of a double stalemate, both in the Israeli-Palestinian war and in the Madrid-Washington peace talks.

The arrival of military personnel to political leadership is not, of course, the only indicator of a painfully stalemated conflict and a ripeness for negotiations; the advent, by election or not, of soft-liners is a second-level indicator of a mutually hurting stalemate.

The election of more moderate or leftist civilians provided an indication of a mutually hurting stalemate in both parts of Cyprus in 2008 (though it was dampened by the defeat of the Turkish Cypriot leader's forces in legislative elections); in the United States in 1974 in regard to the Panama Canal dispute; in Argentina in 1984 in regard to the Beagle Channel dispute; and in Ecuador in 1998 in regard to the Peru-Ecuador border dispute.

The reasons the new leadership gained power and any accompanying messages must be studied for signs of recognition that the conflict is in a stalemate and it hurts.

Assess Changes in Allies. Changes in allies can also constitute objective indicators of a mutually hurting stalemate and point to a change in direction toward negotiation or mediation. External allies may feel costs and losses themselves, they may change their views of the desirability of continuing the conflict, or they may change governments to a new regime that demotes the conflict's importance. If external allies begin to suffer from the continuation of the conflict, they can lessen their support for it, undergoing a hurting stalemate themselves. If external allies begin to feel the conflict is costly for them, regardless of its effect on the parties themselves, this perception can be conveyed to the parties.

The external supporters of the Patriotic Front and the "independent" government of Rhodesia in 1979 felt the hurting stalemate before the conflicting parties themselves and leaned on the parties to accept mediation. The conflict was costing them good relations among other allies, notably other African states and the United States, and their reputation was suffering for not bringing the conflict to an end.

By 2009, external supporters of both sides in the Western Saharan conflict—Spain, France, the United Kingdom, and the United States, as well as members of the African Union who had been strong-armed into recognizing the Sahrawi "government"—were beginning to tire of the long-running (since 1974) conflict, which threatened to blow up, and began to look for a compromise even though any compromise would fall short of self-determination.

Are external patrons seeking to rein in the conflict they are not winning because it is no longer in their interest or is actually hurting them, rather than using the conflicting parties as their proxies merely to

damage the other side? Are external patrons for both sides initiating contacts between themselves, discussing making peace regardless of whether the conflicting parties want to reach a settlement?

This type of disengagement by the superpowers at the end of the Cold War was typical of the period and led to the initiation of negotiations in a number of conflicts in Central America and Africa. As the Cold War began to wind down, the external supporters of the Angolan government, the South-West African People's Organization (SWAPO), the South African regime, and the National Union for the Total Independence of Angola (UNITA) found the conflict not worth pursuing and the stalemate too painful to bear and so leaned on their proxies to begin serious negotiations.

Internal allies can provide indications of a mutually hurting stalemate. Have crucial elements of support for the government become disaffected by the unsuccessful pursuit of the conflict, to the point of looking for a way out (see Step 2, below)? The allies need not go so far as to actually seek a way out on their own; grumbling, signs of refusal to support the parties, interviews, and statements signal a growing dissatisfaction that the government is well advised to heed.

With the Northern Ireland economy weakening and the "Irish tiger" climbing by the early 1990s, Ulster businesspeople (most of them Protestant) began to call for a single island economy. The Northern Ireland Confederation of British Industries issued a paper supporting peace initiatives.

In El Salvador, the hurting nature of the military conflict was felt above all by large landowners, who in response to the rising costs of agricultural production had moved their activities to urban industry and commerce and so no longer needed the war but could buy into a limited land-for-peace formula to end it. Contacts between business leaders and the FMLN parallel to the official negotiations indicated such a trend. The shift in interests of the landed class, the backbone of the government party, ARENA, left the government with only the army as an ally for its conflict policy, and the army was the group that was stalemated.

These various indications of hurt and stalemate are cumulative: The more that are available, the more they can trigger the perception of a stalemate, and the more easily the mediator can make the case that it should be perceived. However, even single indicators can be powerful

goals to perception: When costs or body bags or allies' support are of great importance, these objective indicators can be sufficient to attract attention. Not all indicators need be present for a stalemate to exist, and the absence of cost, pain, and the like need not obliterate other indicators if they are compelling.

Identify Subjective Indicators

Ripeness does not exist without a subjective perception of a mutually hurting stalemate and a way out. In most cases, subjective indicators are a response to objective events. Sometimes, however, subjective perceptions are not rooted in objective reality—but perception of an objective event that does not exist may produce the same result.

Subjective indicators of a mutually hurting stalemate—that is, statements and comments by the parties that betray a lack of confidence in securing a military victory and a discomfort in that impasse—provide the necessary evidence of a mutually hurting stalemate. The perfect indicator would read something like, “We found ourselves stalemated in the conflict and it hurt, so we decided to look for an alternate way of dealing with the conflict.”

Evaluate the Meaning behind Official Statements

Official statements may provide evidence that the parties recognize that they are indeed in a stalemate and it is painful in terms of losses or costs (or both). Are there statements of impending catastrophe, conflict fatigue, escalation futility, or waning public support? Are policy changes, such as “escalations to call,” being discussed or introduced?

Joe Slovo, Communist Party leader in South Africa, said as negotiations took shape in the early 1990s, “The National Party couldn’t rule any longer, and we [the African National Congress (ANC)] couldn’t seize power by force. So that means both sides have to compromise.”⁶

In a different type of conflict, a conflict with nature but also with other parties over action to take, the U.S. representative at the Ad Hoc Working Group that would eventually prepare the Vienna Convention for the Protection of the Ozone Layer in March 1985 said in January that “the margin of error between complacency [stalemate] and catastrophe [hurt] is too small for comfort.”⁷

Are there indirect indications, such as re-evaluations of interests, readjustments of goals, or the announcement of alternative plans for the pursuit of the conflict, that point to the hurting stalemate as their cause?

President Nixon indicated a policy of drawing down troops in Vietnam and relying on local efforts to ensure defense in the Asian arena before talks on mutual troop withdrawals actually began.

Often there is no observable expression of a mutually hurting stalemate. The subjective indicator is hidden in inner decision-making circles or even in a decision maker's mind, posing an exceptional challenge to the mediator, who must pick up on that perception even when official circles are closed.

The Pakistani government turned to negotiations with the hill tribes and the Taliban in 2008 and 2009 because the costs of the conflict rose above the publicly acceptable level and were producing gains only for the insurgencies in the North. The Afghan government sought negotiations with the Taliban at the same time for the same reasons. These decision-making processes were accompanied by informal discussions, rumors, interviews, leaks, and statements to and by the media.

Subjective indicators can come in many forms. The mediator should be sensitive to source, tone, and wording of statements. The smaller the subjective indication of a mutually hurting stalemate, the more it warrants investigation and encouragement. Indicators are not likely to come as broad, clear statements, at least not initially, but rather as slight changes in standard language, leaks, back channel messages, trial balloons, and the like. Nor are initial indicators likely to come as unambiguous messages; they may well be contradicted by official statements at the same time. Indeed, such contradictions may be an indication of policy debates within the conflict party, showing the need to encourage the perception of an opening.

Assess Unofficial Statements in Public Media

The media may provide an indirect indication of the subjective perception of a mutually hurting stalemate. Are there editorials and op-eds by well-placed observers analyzing the situation, airing possibilities, and offering solutions? Are there protests against rising costs, unachieved results, or costs above an acceptable level, from the public or governments?

Are there public reactions of pain, that is, indicators of the gap between costs and expectations?

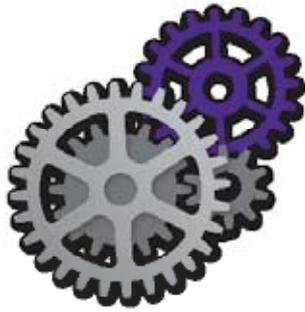
Often the line between officialdom and unofficialdom is porous, with messages going both ways. Unofficial statements can be used to test ideas before they are issued by officials. They can also be used to express ideas, pass them to officialdom, and build public support for them. In countries susceptible to public pressure, rising public opposition to policies continuing the conflict can lay the ground for official recognition of a need for policy change. Even (or perhaps, especially) in authoritarian countries, rising public opposition to a policy can be manifested in subtle ways and is watched carefully by the incumbent regime (*as in the case of government attention in Morocco and Algeria to public attitudes toward the Saharan conflict*).

Unofficial statements can be used to issue trial balloons designed to attract reactions from the other side. Such statements can be related to specific objective pressures, such as sanctions, conflict losses, or declining domestic fortunes, and also to softer pressures, such as public condemnations, loss of domestic support, or assessments of vulnerability.

As de Soto noted in El Salvador, "As the dust settled, the notion that the conflict could not be solved by military means, and that its persistence was causing pain that could no longer be endured, began to take shape. The offensive codified the existence of a mutually hurting stalemate. The conflict was ripe for a negotiated solution."

The same procedures in regard to official statements apply to unofficial subjective indications of a mutually hurting stalemate. On the one hand, the mediator and his or her team should be well-read and alert to statements beyond those from official leaders and spokespersons. Whether in a society of controlled or of free public expression, the mediating team should carefully screen the media and opinion leaders to identify trends in thought and influential commentaries. On the other hand, the mediating team must be extremely sensitive to nuances in such statements and should consider whether those nuances are tentative expressions of evolving thinking within official circles or deliberate attempts to introduce new thinking and perceptions into those circles, that is, whether the statements come from or go to policymakers. Official statements carry

more weight, but unofficial statements may be significant in illuminating subtle shifts and initial turns in policy. Official statements need not be formal announcements; they can appear in press interviews, in legislative hearings, or in the context of discussions. Therefore, the mediating team must be alert to small indications of change. Although team members should be listening for any change in tone from conflict parties, an assigned number of specified channels should be established to facilitate signal detection.



STEP 2

Assess the Existence and Perception of a Way Out

In assessing whether a way out of the stalemate exists—as in assessing the ripeness of a stalemate—the mediator must look for both objective and subjective indicators. “Way out” does not necessarily mean that the conflicting parties have identified a mutually acceptable solution to their conflict, but it does mean that both parties have perceived that they and the other party are willing to look for a joint solution.

Objective indicators are less distinguishable from subjective indicators for the way out than for the mutually hurting stalemate because the existence of the way out is itself primarily subjective and depends on each party’s perception of the other party’s intentions. An objective indicator of a way out may be an action or statement by one party; a subjective indicator may be the other side’s perception of that move as an encouragement to talk.

In January 2006, Hamas won a majority in Palestinian legislative elections, earning it the right to lead a government. (The Quartet had earlier supported Hamas’s participation as part of Palestinian Authority President Abbas’s inclusive strategy aimed at bringing the most powerful resistance movement into the mainstream.) Hamas had taken significant steps by agreeing to and complying with a unilateral cessation of attacks against Israel. Hamas offered to include Abbas’s Fateh in a unity government—another objective indicator. Hamas’s overtures were rebuffed by the Quartet, which instead set strict conditions for engagement with and cut off aid to the Palestinian Authority, under which Israel in effect blockaded the Palestinians.

In March 2009, President Obama coupled New Year greetings to Iran with a friendly wish to engage in dialogue, an objective indicator; the

Iranian response was to pile on additional conditions, an indicator of the absence (at least for the moment) of a subjective perception of a way out.

Identify Objective Indicators

The process of assessing objective evidence of a way out begins with identifying the willingness of each side to look for a joint solution as an alternative to the pursuit of escalation and victory. Unlike mutually hurting stalemate indicators, way out indicators are not external to the parties' actions or statements but are found in the moves of each party. There are fewer objective indicators of a way out than there are objective indicators of a mutually hurting stalemate because the former depend on a signal of some sort from one side: In other words, they are to some extent an amalgam of objective and subjective indicators.

Evaluate Official Statements

Official statements may indicate greater openness to talking or a willingness to drop preconditions. Have one or both parties issued statements announcing a change either in substantive positions or in policies toward a joint search for agreement? Has one party gone so far as to indicate its intention to seek negotiations (*as occurred in Northern Ireland in 1996*)?

Unilateral cease-fires can be ambiguous indicators, because cease-fires may serve only as an opportunity to reprovision or rearm military forces, but they may also constitute a trial balloon leading to talks. Has one of the parties ordered a unilateral cease-fire? Such announcements should be investigated and pursued.

De-escalation of goals from holistic or abstract aims to specific purposes can lay the ground for a negotiable way out. Has one of the parties made public statements that drop a crucial element of previous conditions? In the absence of changes in positions, statements of revised interests can provide an indirect indication of a sense of a way out. What is not said can be as significant as what is said. Statements may be made to the media, in parliament, or via any other venue, international or domestic, that gets the message across. Because they are tentative, such statements may well float only as trial balloons, coupled with denials and contradictions in order not to make the policy change seem too abrupt

while awaiting response from the other side. The mediator and the other side need to be alert to such subtle messages.

Three days into the Cuban stalemate, on October 25, 1962, John Scali, an ABC correspondent, received an urgent invitation to lunch from a Soviet embassy official, who presented what would become the ultimate formula for agreement to resolve the Missile Crisis but to which he added conditions later that evening; the démarche, rather than its wobbly substance, was clear indication of a way out.

Assess Preliminary Signs of Cooperation

Are there new joint actions, cooperation in nonconflict programs, cease-fire actions, exchanges of prisoners or wounded, assurances of troop movements, declarations of non-hostile intentions, or exchanges of greetings and memorial messages?

The famous “Ping-Pong diplomacy” between the United States and China indicated a softening of relations that opened the way to talks over the renewal of diplomatic contacts between the two countries.

Objective indicators of the possibility of a way out may be found in informal statements, op-eds, media and conference discussions, and even actions indicating that the government should give some indication of a willingness to explore discussions with the adversary. Parts of society that normally support the government, such as business groups, can give such indications even if the government does not. Such statements, it should be noted, are merely pressure; it takes a similar statement from the government to constitute solid evidence of a willingness to seek a way out. Leaks regarding splits within rebel leadership can turn into objective evidence of such willingness, creating an opening that the government might seize.

Beginning in 1986, South African businesspeople traveled to Zimbabwe to meet ANC leaders to investigate the possibility of resolving the conflict between the two parts of society and their political representatives. Four years later, talks began.

Identify Subjective Indicators

For the mediator, recognizing a way out involves finding signs of the subjective perception of the possibility of a way out by both parties. The

perfect indicator would read something like, “We think our opponent is willing to join us in looking for a solution,” or more broadly, “The way to a negotiated solution is less encumbered than might have appeared.”

When looking for subjective indicators of a way out, mediators should ask themselves the following kinds of questions: Has one side recently referred to past moments of cohabitation or cooperation with the other side, made positive comments about the other side, issued statements that seek to de-demonize the other side, or recognized the other side's needs and aims? Has there been a decrease in negative statements about the other party, in insistence on the need to win at any cost or the certainty of doing so, or in the valor of holding out at all costs for the patriotic cause?

Have previously insurmountable obstacles to negotiations or unacceptable conditions to an agreement been removed? Have previous maximum goals, humbling preconditions, or preliminary capitulations been reduced?

A journalist covering the Aceh conflict noted, “the scale of the tsunami disaster was so huge . . . that hearts and minds there seem to have changed. The [Aceh separatist movement] decided to suspend at least its ambition to achieve independence because . . . rebuilding—not fighting—was the priority.”⁸

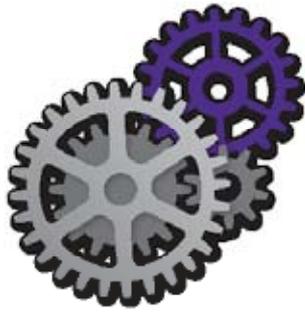
Catching subjective indicators requires a tuned ear and a sharp eye, because the parties will usually avoid overt statements lest they sound like a capitulation instead of an invitation. Mediators should be attentive for any signs that the door to negotiation is opening.

In February 2009, the Algerian prime minister gave a number of fulfillable conditions to Morocco for the opening of their common border without, for the first time, mentioning the Western Saharan conflict, an indication of a possible path to a way out in the relations between the two parties to the conflict.

Mediators may be able to perceive subjective indicators of a way out directly via general contacts with the conflicting parties. Discussions with the parties may yield no explicit admission that they are tired enough of attempts to break the stalemate to be open to considering negotiations, but the mediator may sense such a change of heart.

A U.S. State Department official working on Bosnia stated in August 1995, “Events on the ground have made it propitious to try again to get the negotiations started. The Serbs are on the run a bit. That won’t last forever. So we are taking the obvious major step.”

Right after the 1995 war between Peru and Ecuador that heightened the sense of the mutually hurting stalemate, President Alberto Fujimori of Peru declared that the existing boundaries “will remain demarcated, a little more in a curved line, but the demarcation will be completed and the problem will be finished,” a declaration that drew much public criticism because it suggested that a negotiated settlement of the remaining problem was being considered, as indeed it was.¹⁰



STEP 3

Induce Recognition of the Stalemate and a Way Out

When conflicting parties cannot see the mess they are in and are not receptive to the possibility of mediated negotiations, the mediator needs to help them perceive their stalemate and the pain associated with it and the possibility of negotiating a way out. These acts of ripening assume that, objectively, a hurting stalemate and the possibility of negotiating a compromise exist and that the subjective appreciation of these facts is absent. The parties will resist, consciously or subconsciously, because they want to win and because they do not want to recognize the situation of entrapment that they have created for themselves—or simply because they do not agree with the mediator’s assessment, possibly because they are in possession of information that contradicts it.

Induce Recognition of Stalemate and Pain

All the mediator’s skills of persuasion are called on when the mediator must induce the parties to the conflict to recognize that a hurting stalemate exists. Conversations beginning with “Don’t you think that...?” “Don’t you see that...?” “How long can you...?” “What do you think of...?” are good openers. Diplomacy involves efforts to help the parties see the importance of ending the conflict early rather than prolonging it in the hopes of better fortunes in the future. Because continued conflict means continued costs, and probably rising costs as well, the mediator should strive to persuade the parties to calculate and compare the price they will pay for holding out for an uncertain victory with the benefits they will accrue from negotiating sooner rather than later.

Directly Encourage the Perception of a Stalemate

The mediator should begin by empathizing with and expressing understanding of the position of the party being addressed, and then draw attention to the facts and press for signs of recognition. One tactic is to start either with the hurt or the stalemate, and then relate it to the other element. Mediators should work to free the parties from thinking in terms of the conflict and their goals in it and instead look to future opportunities and alternatives and creative ways out of it, moving from mutually hurting stalemate to a way out.

Secretary of State Henry Kissinger, meeting with the Israeli cabinet of Golda Meir, explained that he understood the position of Israel in refusing to negotiate with Egypt but then, with a historian's eloquence, lamented how the lost opportunity would look some years hence, when the costs of failing to negotiate would have become apparent.¹¹

The mediator might draw parallels with other situations where the parties found themselves in a hurting stalemate and suggest similarities to the current situation.

When Robert Doussou was persuading Beninois dictator Matthieu Kerekou to reach an agreement with the NGOs pressing for a new constitution, Kerekou was said to be deeply impressed by CNN reporting on the situation of Romanian dictator Nicolae Ceausescu as he faced (but did not give in to) the same sort of popular pressure.

The mediator should encourage the parties to think about the sustainability of the present course and to evaluate its costs and losses, to consider the strength of the opponent and evaluate the chances of overcoming the other side, and to reflect on the chances of winning and its costs and the chances and costs of the opponent's attempt to win. The mediator should encourage the parties to evaluate the possibilities of escalation and to undertake a cost-benefit analysis of their own escalations and their efforts to counter the opponent's escalation.

Indirectly Encourage the Perception of a Stalemate

The mediator can encourage other parties to work as "friends of the mediator" and impress upon the conflicting parties the painful impasse in which they are caught. The mediator may be able to plant, discreetly, an

awareness of the stalemate and its hurt in op-eds and other articles in the media, as well as among opinion leaders, friends of decision makers, and other mutual contacts. The parties' allies may also be helpful in spurring a perception of the stalemate and its hurt. Can the parties' allies be induced to reduce or terminate their support for continuing efforts to bear or break out of the stalemate, and to indicate that they will no longer pour resources into efforts to do so? Can alternative goals be encouraged that would draw resources and attention away from the conflict situation and bring out the stalemate that characterizes it? Can other parties in similar situations be brought in to testify?

Track-II efforts can also be used, directly or indirectly, to encourage the parties' perception of a stalemate. For instance, the mediator may offer support to NGOs that host sessions at which supporters of one or both parties are asked to analyze the current conflict situation and to try to understand the other side's perspective on the conflict.

Induce Perceptions of a Way Out

The mediator can induce recognition of a way out by identifying possible and acceptable outcomes and persuading each party that the other sees that possibility as well. The mediator should test salient solutions for acceptability, air alternative solutions if a single salient solution does not exist, develop ideas about possible solutions if no salient solution exists, and bring up components of a solution if compensation or construction is required. In this step, the mediator's friend is the phrase, "What would you do if...?"

Sell Solutions

Perception of a way out does not require agreement on a particular solution but on the perception that, objectively, a solution is possible; consideration of the possible types of solution can help convince parties that there is an attainable goal toward which to work.

The mediator should help identify a *salient solution* on which the parties might agree. Salient solutions are those that stand out as prominent and discussed terms of agreement to end the conflict. If there are two (or more) salient solutions, the mediator should focus either on *compromises*, in which each party gives in a little in exchange for the other's concessions

until they reach a rough midpoint between their initial positions, or on a set of *compensations*, in which each party buys the achievement of an approximation of its goals with the “payment” of an agreement to the other’s achievement of its goals. In the case of compensation, can other issues be brought in to balance one party’s achievement of some or all of its goals? If no salient solutions exist, the construction of a new definition of the conflict and a new set of terms as the basis of a joint agreement is the next aim. Can such solutions, or component elements that can capture the parties’ attention and creativity, be identified as objectively possible?

Encourage Perceptions

Mediators should determine if outside parties can be enlisted to encourage the perception of negotiability and reciprocity. Perhaps “friends of the mediator” can be engaged to carry the same message. Diplomatic gatherings, consultation sessions, and articles in the press may offer opportunities to bring out positive attitudes of the other side and elaborate means of testing them. Can discussions and conferences be organized to bring out the negative value of demonizing, critically evaluate the usefulness of maximum preconditions, or examine the topic “What is this conflict like, and what precedents exist for solutions?” Can Track-II efforts be employed to bring unofficial representatives of the parties together to test possibilities? Can joint meetings be scheduled to see if the usual confrontation can be turned into some potential openings or dialogue sessions to compare future hopes?

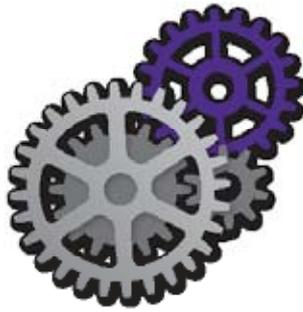
During the civil war in Guatemala, Lutheran and Catholic churches began contacts with both sides, ending in a meeting in Norway where representatives concluded a meal by assuming blame for the current conflict, a first step in engaging in a conversation on future aspirations.

In Liberia in 1993 and Ivory Coast in 2003, dialogue sessions were held among leaders of all conflicting parties, programmed on four questions: Where is our country now? Where do we want it to be five or ten years from now? What prevents us from attaining these goals? How can we overcome these obstacles? The dialogue opened possibilities of fruitful further discussions.

Display Creativity

The mediator may need to creatively recast the situation. Can aspects of past attempts at resolution be retained? Is there something to be learned from examining the reasons for failure as a guide to overcoming obstacles? What is this conflict like? How were others resolved? Do similar conflicts suggest similar solutions? Alternatively, do differences from similar conflicts suggest new angles? What are the real reasons behind the other party's positions, and how might they be addressed?

Because timing mediation initiatives depends so heavily on the perception of the parties, not just on the realities on the ground, the effectiveness of a mediator depends in large part on his or her skill in shaping and influencing those perceptions and in introducing innovative ways of looking at the conflict that capture the attention of the parties.



STEP 4

Ripen the Stalemate and a Way Out

If the parties do not perceive a hurting stalemate and a way out that constitutes a ripe moment, the mediator may have to take a more active role in ripening the situation. If “inducing recognition” (the subject of Step 3) means working on the subjective appreciation of the situation, “ripening” (the subject of this step) may mean changing the objective conditions. In so doing, the mediator moves from a role as a communicator (carrying messages) and a formulator (bringing ideas) to that of a manipulator (changing conditions), a more intrusive role that is suitable for more powerful mediators, not for smaller states and NGOs.

The purpose of ripening is to bring the parties to the objective condition of a mutually hurting stalemate and, more specifically, to equalize the sides so that neither party feels beaten in the conflict or too weak to face the opponent in negotiation. Parties feeling too weak or unequal are reluctant to meet their opponent in negotiation and may well be unable to hold to their agreement if one is reached. The process of ripening also involves going beyond inducing the perception of a way out to creating attractive solutions and encouraging the parties to consider them.

Ripen the Stalemate

Ripening refers to measures taken to bring the conflict to a stalemate.

Use Diplomatic Measures

Negative measures in the form of *threats* and *warnings* may be required. Promises and positive predictions do not stand out clearly unless they are

contrasted with worse alternatives, which may be presented in the form of applied threats or foreseen warnings. The mediator should indicate potential negative measures the mediating country would be prepared to take if the conflicting party or parties refuse to acknowledge the impasse into which they are escalating. Mediators often make the mistake of seeing their role as only offering positive prospects, when in fact they need also to indicate—and sometimes ensure—the likelihood of worse prospects if mediation is not accepted.

Mediators should point out the two-handed policy on which mediation is based: better prospects if mediation is accepted and pursued, worse consequences if it is refused. Such threats and warnings should be stated evenhandedly, but if one of the parties is recalcitrant, it may need to be subjected to criticism for blocking the process. Mediators should reward positive responses to pressures with praise.

Conflicts are ripened when the cost of third-party relations outweighs the potential benefits of the conflict. A third-party mediator can help bring about a stalemate by indicating that its own relations with the conflicting parties can be affected by their response to its efforts to end the conflict; mediators serve as crutches or surrogates for trust between the parties, and often their relations with the parties are more important than the cost of the conflict.

France summoned the warring Ivorian parties to Marcoussis in 2003 to make peace—and they came because of their concern for relations with Paris. The United States played the same role in the Sudan conflict leading up to the Comprehensive Peace Agreement in 2005. A similar approach was taken by the UN secretary-general in inviting Cypriot leaders first to New York and then to Switzerland in a last-ditch attempt to finalize a settlement before EU accession in the first trimester of 2004.

The most specific diplomatic threat and evocation of relations is the threat to leave the process. The mediator should make it clear that mediation will continue as long as there is sincere participation in the process, but that bad faith will be identified and can cause the mediation to end. The mediator should remember, however, that ending mediation and attaching blame means ending mediation for a long while; withdrawal with blame is not conducive to taking up the process again soon.

President Carter always announces that his mediation implies an honest effort and that if one of the parties does not play sincerely, he will terminate his engagement and indicate the uncooperative party, as he did in 1988 in the Ethiopian civil war over Eritrea. In contrast, President Clinton promised that he would not ascribe blame if the Camp David II mediation failed, but then castigated Palestinian chairman Yasir Arafat for being uncooperative.

Another focus of diplomatic ripening measures involves closing out alternative mediation and support channels and focusing parties' attention on the stalemate and a sole mediator. Mediators should show would-be mediators that competing efforts will only encourage outbidding and diminish the chances of success. They should indicate privately why alternative channels are less likely to produce results, and invite alternative mediators to support a single mediator's efforts. However, if other mediators have a better position or other advantages vis-à-vis the parties, all should join forces to provide a coherent, combined effort. The mediator may offer to form a contact group or encourage others to constitute a "friends of the mediator" group.

The Carter team mediating the Congo (Brazzaville) conflict in 1999 arranged the withdrawal of competing mediators, including the Francophone and African heads of state, in order to avoid outbidding among mediators; it would have been helpful to get Angola to withhold its support for the government in order to facilitate an even playing field among the three "presidents."

In southwest Africa, Chester Crocker continually repeated that U.S. mediation was "the only game in town," and South Africa realized that when it tried an end run with an alternative mediation using Zambia.

Even a "friends of the mediator" arrangement is no guarantee that end runs will not be attempted, as evidenced by the Venezuelan president's ill-advised foray behind the UN secretary-general's back at a difficult moment in the El Salvador negotiations in 1991.

Public positions in regard to the conflict and the parties' conflict behavior may serve to demarcate what the mediator regards as permissible actions, reinforce a stalemate, and indicate limits to the conflict. Condemnations of parties' actions, either as public statements or as UN

resolutions, send powerful messages. Such condemnations are often avoided, however, because they may imply a biased stance toward the parties, or are issued only when they can be applied to both sides. The mediator must weigh the risk that a public reprimand could entail to his or her extremely special, even intimate relationship with parties to a conflict, not unlike that between analyst and analysand. Are limits indicated by public disapproval of specific tactics employed by one side? Do limits apply to both sides that can be used to enforce the stalemate by constraining impassible escalations?

Employ Economic Measures

Measures such as economic aid, trade agreements, and debt forgiveness may be used to strengthen one of the parties' capabilities and bring about a stalemate. Are there economic measures that can help the weaker party stay in the contest and achieve a more equal position in upcoming negotiations? Can economic measures be used as an incentive for greater flexibility? Can they be used to reduce the risk of engagement in talks, to cushion losses in actual conditions, or to facilitate a shift from conflict to accommodation in the eyes of the public? Can economic measures be used to assure a party of continued relations as it is pressed to make concessions?

Economic measures can also be employed to increase the attractiveness of a solution to both sides. Sometimes the prospect of ending a conflict is simply not attractive enough to bring the parties to an agreement. Can additional benefits be offered to the parties as they refocus their attention on a reframed solution? Can the parties be redirected from conflict to development and thereby opened to the potential of donor pledges and international assistance? Can economic assistance be tied to a plan for disarmament and demobilization, repatriation, rehabilitation, and reintegration (DDRRR) that would remove the danger otherwise posed by former combatants on the loose? Can assistance for reconstruction be offered by the international community as part of the agreement package?

After accomplishing two disengagements in the Middle East, on the Sinai and the Golan Heights in 1974, U.S. mediation efforts ran up against Israel's refusal to proceed with a second Sinai withdrawal. Threat of a sweeping reevaluation of Mideast policy—that is, a reconsideration of U.S.-Israeli relations—followed, as did a massive aid commitment that remains to this day and that had to be matched for Egypt to break the deadlock.

Negative economic measures can also help to equalize the sides and bring the parties to a negotiating venue. Withholding a carrot constitutes a stick, and removal of a stick constitutes a carrot. Can carrots and sticks be used to nudge the parties into a negotiation mood? Can these be presented positively, as adjuncts to a policy aim of resolving conflict and introducing peaceful relations in the interest of both parties?

The United States promised loan guarantees to Israel to bring it to the Madrid Mediation Forum with the Palestinians and Arab states in 1991.

General sanctions can be used for the same purpose. *Sanctions were major motivators gaining Slobodan Milosevic's participation and agreement in the Dayton negotiations over Bosnia in 1995.* General sanctions are a blunt instrument that mostly affect people who are in no position to influence the behavior of the obdurate leader—as in the case of Saddam Hussein—and the risks are such that most mediators should not be associated with them.

Apply Military Measures

Military measures generally do not involve direct engagement, which would compromise the mediator, but rather the extension or withholding of military support. The purpose is the same as with economic measures, to keep the parties locked in a stalemated conflict that they cannot win and to preserve an equality among them that allows fruitful negotiations.

France established a military interposition force between the warring factions in the Ivory Coast in 2005 in hopes of creating an impasse and bringing the factions to negotiations. The United States provided arms to a beleaguered Morocco in its war for the Western Sahara in 1976 after having previously refused in order to create a military stalemate and a negotiating situation that the Organization of African Unity was advocating. The United States also supplied arms to Israel after it was driven from the Sinai in 1973 so that it could return to a battlefield stalemate, producing the mutually hurting stalemate that led in turn to the Sinai withdrawals under Kissinger and the Washington Treaty under Carter.

Measures that create a stalemate that ultimately blocks parties from pursuing a strategy aimed at winning are not merely diplomatic tactics but require serious commitments from the mediator's home government—if

that government is in a position to go that far. The mediator cannot provide aid, threaten sanctions, threaten withdrawal, or offer sweeteners as a personal initiative or a tactical ploy. Such measures come from the home office and are part of the ongoing relations between the mediator's country and the conflicting parties. They may well be in the legal domain of the UN Security Council under the UN Charter, but they are not likely to be within the capability of any but major and interested parties.

Ripen the Attractiveness of Negotiating

Creating the perception of a way out involves floating ideas about possible formulas for conflict management and resolution. The idea is not to provide terms of agreement but to help the parties think about the possibility of finding solutions and attracting the agreement of the other side.

Use Diplomatic Measures to Reframe the Conflict

Are there new ideas about enlarging the field of discussion to provide compensation for compromise or new exchanges and the prospect of “buying” agreement? When concessions and compensations are not available, are there new and different ways of thinking about the conflict? Often this thinking involves not just new ways out of the conflict but new ways of framing the conflict itself. Could the parties articulate basic principles that constitute building blocks toward more specific thinking about a settlement? Putting aside the substance of an agreement, could the parties be brought to establish a procedure “if ever they were to start talking about an agreement,” or at least to handle future, conceivable issues that could arise in the conduct of the conflict?

When Lord Caradon came up with the formula “territory for security” in UN Security Council Resolution 242 in 1967 as the key alternative to zero-sum definitions of the Arab-Israeli conflict, he opened a new definition of solutions that helped ripen thought and prepare for later negotiations (even though the Arab states rejected all negotiation at the time in the “Three No’s of Khartoum”).

The phrase “what if” comes in again as a useful device: “What if we looked at the conflict in these terms; would that make a difference?” Can thinking be prompted about small steps to begin the process, including truces and cease-fires, separation of the parties, a proposed statement of

principles, and a procedural roadmap? Can such measures be proposed to the parties or issued by the mediator and its friends?

UN Security Council Resolution 435 was a roadmap for the independence of Namibia that, together with the innumerable suggestions by the team of Assistant Secretary Crocker over a six-year period (1981–86), prepared the parties for a rapid grasp of the stalemate at the end of the period and successful negotiations in 1987.

UN Security Council Resolution 687 laid down the principles on which the parties relied to end the Iran-Iraq war.

The effectiveness of the Quartet's roadmap for a two-state solution to the Israeli-Palestinian conflict is marred, however, by the many reservations attached to it by Israel that nullify it as an agreed-upon basis for negotiation.

Declare a Willingness to Engage

The most basic diplomatic indicator of ripening is a signal that a state (or, occasionally, another party) is ready and willing to mediate. The availability of a party that will take on the costs of mediation is an indication of its estimate of the possibility of ripening the situation. The mediator should communicate to the conflicting parties a willingness to help them end the conflict and avoid being defeated. All parties should understand that the mediator's relations with them are important and that their interests and point of view are understood. The mediator should declare a willingness to engage, using the occasion to lay out parameters that should guide the effort to a fruitful end, and appeal to the parties to reorient time and resources from zero-sum conflict to positive-sum programs of joint development.

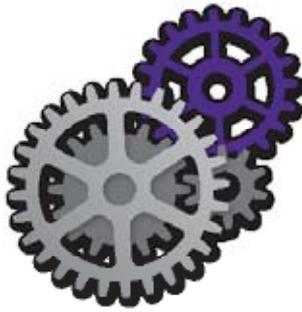
Determine Prenegotiation Functions

Prenegotiation functions are items that must be established or decided upon before actual negotiations can be initiated; by resolving these issues, the mediator can clear the way for more positive consideration of a way out. These functions include

- identification of the parties necessary to a settlement as well as identification of spoilers to be isolated;

- identification of the issues to be resolved and separation of issues not resolvable in the conflict;
- identification of alternatives to the current conflict course and to a negotiated agreement;
- establishment of contacts and bridges between the parties;
- clarification of costs and risks involved in seeking settlement;
- establishment of requirement (assurance of reciprocity) between the parties; and
- assurance of support for a settlement policy within each party's domestic constituency.

In many cases, the mediator cannot decide these matters but can help the parties focus on them and, by floating ideas and making suggestions, help the parties move toward preliminary decisions. Often—as in the cases of issues, parties, costs, and risks—preliminary functions involve the exchange of assurances between the parties that the prospective negotiations will remain within manageable bounds. The mediator can bring the parties together to build bridges, if only for the process of de-demonization, not for actual negotiation.



STEP 5

Position Oneself as a Future Mediator

If active ripening policies fail to attract the parties' attention and produce movement toward negotiation, the would-be mediator can always fall back on a policy of positioning. The mediator should constantly remind the parties that he or she is available to help them out of their conflict and that their path can end only in a stalemate that they cannot win, if they are not there already. Are there occasions in normal diplomatic contacts when the parties can be reminded of the mediator's willingness to mediate? Are there occasions for public declarations and for private assurances that the path to accommodation is ready to be opened? Can the mediator throw in new ideas, new ways of thinking, to keep the parties from remaining stuck in their positions? Can the mediator repeatedly show the parties where their fixed positions are leading them, until they ask what the alternatives might be? Can the mediator get authorization, from the home office or from the UN Security Council, to "just explore a bit" to see what the parties are thinking in informal moments? Are there occasions to indicate to other potential mediators whether their possible entry would be considered an acceptable alternative or whether the positioning party intends to remain the only game in town?

The much-touted success of Assistant Secretary of State Crocker in pulling the rabbit out of the hat in the Namibian conflict was testimony to recognizing and seizing ripeness, but the less-noticed aspect of his success was his patient tenacity in positioning for six years until the ripe moment arrived.

In the El Salvador case, UN secretary-general Xavier Pérez de Cuéllar began positioning himself to be useful as early as November 1986, when he

met with the secretary-general of the Organization of American States, two and a half years before his role, limited to “good offices,” was authorized by the UN Security Council and three years before the turning point of ripeness allowed a direct role.

As U.S. secretary of state Alexander Haig's effort to defuse the looming conflict in the South Atlantic between the United States' allies Argentina and the United Kingdom waned in 1982, Secretary-General de Cuéllar put to the parties his willingness to mediate. They both accepted his offer, but the conflict was not averted. De Cuéllar's effort was handicapped by the failure of the United States, which had thrown its lot behind the United Kingdom, to apprise him of the state of play at the time of handover.

Conflicting parties can be expected to try and try again to prevail in their conflict. Reinforcement is the normal response to opposition: “Don't give up without a fight,” “No gain without pain,” “Hold the course, whatever the cost,” “When the going gets tough, the tough get going,” and “If at first you don't succeed, try, try again” are common sayings in any culture. They also represent costly but useful efforts to become further locked into a stalemate and to a realization that the way to victory is blocked. As long as this realization has not yet hit the parties, the mediator's message is best limited to “Here I am if [when] you need me.”

U.S. secretary of state James Baker remarked to Congress in 1990 that when the parties in the Israeli-Palestinian conflict were serious about making peace, they should call the White House. “The telephone number,” he said, “is 1-202-456-1414.”

Can the danger of entrapment be conveyed to the parties, along with the willingness of a third party to help them avoid it?

Conclusion

Parties to a conflict need help to extricate themselves. Winning may be unlikely, but the parties may be too embroiled in the conflict to perceive the stalemate or think of a way out. They need—even if they do not welcome—the help of a mediator.

Ripeness is a characteristic of conflict, and heightened conflict and attempts at escalation may be necessary to set up the conditions for ripeness. If a mediator can help the parties see that danger before they prove it to themselves by escalation, the mediator will be performing a great service to the parties and to the world.

The tactics of ripeness involve helping the conflicting parties see and emerge from a mutually hurting stalemate. The mediator must emphasize that there are no winners and no losers in ending the conflict. The path from a stalemate to an acceptable outcome begins with the conveyed willingness to seek a way out and a perception by each party that the other has that willingness.

Third parties who see involvement in a conflict as mediators in their interest must begin with their own assessment of ripeness; if the assessment is positive, mediators must convey that fact to the conflicting parties and help them perceive it. In this process, mediators look for indicators of the objective facts and of the parties' perception of them. The biggest job of mediators is to enhance that perception; after that, guiding the parties toward the discovery of their own solutions follows naturally (even if not easily).

Once the process of discovery and invention has begun, it is important to keep the notions of a mutually hurting stalemate and a way out alive. The perception of a way out turns gradually into a solution, but the perception of a painful stalemate must remain present to keep the parties on track. If they forget it, they may be tempted to drop out of negotiations and lunge for a one-sided victory.

If such a perception is not forthcoming, the mediator is pulled into the more demanding role of helping to create the stalemate and its associated

pain. Acting as a manipulative mediator takes commitment and runs risks, but it may be the only way to bring the mediation to a successful conclusion.

If all efforts fall short but the mediator remains interested in obtaining a positive conclusion, if for no other reason than that the pain of the unresolved conflict falls on the mediator as well, the mediator can position himself or herself for a later useful role. In any case, the mediator must not feel a greater pain than the parties and therefore want a conclusion more than they do. In that case, the parties have control over the mediator rather than vice versa, and mediation becomes weak and vulnerable.

Notes

1. John Campbell, *Successful Negotiation: Trieste* (Princeton, N.J.: Princeton University Press, 1976), 73.
2. Henry Kissinger, *New York Times*, October 12, 1974.
3. Chester A. Crocker, *High Noon in Southern Africa* (New York: Norton, 1992), 363.
4. Agence France Presse, May 17, 1992.
5. At the outset, confusion may arise from the fact that not all “negotiations” appear to be the result of a ripe moment. Negotiation may be a tactical interlude, a breather for rest and rearmament, a sop to external pressure, without any intent of opening a sincere search for a joint outcome (F. C. Ikle, *How Nations Negotiate* [New York: Harper & Row, 1964]). Thus the need for quotation marks, or for some elusive modifier such as “serious” or “sincere,” when describing negotiations. It is difficult at the outset to determine whether negotiations are serious or sincere, and “true” and “false” motives may be indistinguishably mixed in the minds of the actors themselves. Many theories contain a reference to a “false” event or an event in appearance only, as differentiated from an event that has a defined purpose. Indeed, a sense of ripeness may be required to turn negotiations for side effects into negotiations to resolve conflict.
6. Quoted in Paul Taylor, “South African Communist Sparks an Explosive Debate,” *Washington Post*, November 22, 1992, A32.
7. R. E. Benedict, *Ozone Diplomacy: New Directions in Safeguarding the Planet*, rev. ed. (Cambridge, Mass.: Harvard University Press, 1998), 43.
8. Paul Reynolds, “Analysis: Politics and the Tsunami,” BBC, December 21, 2005, <http://news.bbc.co.uk/2/hi/asia-pacific/4548832.stm>.
9. *New York Times*, August 9, 1995, A7.
10. Eduardo Toche, Walter Ledesma, and Pierre Foy, *Peru-Ecuador: Entre la guerra y la paz* (Lima: DESCO, 1998), 63.
11. Matti Golan, *The Secret Conversations of Henry Kissinger: Step-by-Step Diplomacy in the Middle East* (New York: Quadrangle, 1976).

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About the Conflict Management Program at SAIS

The Conflict Management Program at the Johns Hopkins University School of Advanced International Studies in Washington, D.C., is a unique program of graduate studies that teaches and conducts research into the field of conflict management within the context of international relations. It maintains a Toolkit of conflict management concepts and issues an annual report based on an onsite inspection on sources of endemic conflict and recommendations for its management in a specific conflict area (2006 & 2007 Haiti, 2008 Northern Ireland, 2009 Cyprus, 2010 Kosovo). It also conducts PeaceKidZ, a teaching program in selected Washington D.C. middle schools, also available as a manual. Its programs and publications are available at <http://www.sais-jhu.edu/academics/functional-studies/conflict-management/index.htm> and <http://www.sais-jhu.edu/cmtoolkit/index.htm>. Program director is Dr. P. Terrence Hopmann.

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