

Negotiating Peace

Lessons from Three Comprehensive Peace Agreements

What lessons can be learnt from peacemaking in contemporary peace processes? This report assesses practical and theoretical challenges from three comprehensive peace processes: Bosnia and Herzegovina – the Dayton Agreement (1995), Liberia – the Comprehensive Peace Agreement (2003), the North-South conflict in Sudan – ‘The Naivasha Agreement’ (2005). The aim of this report is to single out general features in these agreements, and from the peace processes that preceded them. It pulls together some of the insights generated in these reports as well as what is known from general literature and has emerged during the deliberations of this project, notably the Uppsala Workshop held on September 21, 2009. The report provides 18 findings for Negotiating Peace.

This is a fourth report that builds on three separate in-depth analyses by Roland Kostić, Desirée Nilsson and Johan Brosché, respectively. The four reports constitute one joint project supported by the United Nations Department of Political Affairs and its Mediation Support Unit (MSU).

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Published by Uppsala University, Uppsala and the Mediation Support Unit,
Department of Political Affairs, United Nations, New York and
with the support of the Government of Canada

Department of Peace and Conflict Research, Uppsala University,
P.O.Box 514, SE-751 20 Uppsala, Sweden.
Website: www.peace.uu.se

ISBN: 978-91-506-2105-1

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In support of the Mediation Support
Unit, Department of Political Affairs,
United Nations

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Published by Uppsala University, Uppsala, Sweden
and the Mediation Support Unit, Department of Political Affairs,
United Nations, New York, USA

Design and typesetting by Krassimir Kolev
Printed by Universitetstryckeriet, Uppsala, Sweden 2009

Distributed by:
The Mediation Support Unit, Department of Political Affairs, United Nations
Website: www.un.org/Depts/dpa/
and The Department of Peace and Conflict Research, Uppsala University,
P.O.Box 514, SE-751 20 Uppsala, Sweden
Website: www.peace.uu.se

ISBN: 978-91-506-2105-1

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This material has been produced by a consultant team affiliated with the Department of Peace and Conflict Research, Uppsala University upon the request of the Department of Political Affairs and its Mediation Support Unit. This effort was carried out with the financial assistance of Canada provided to the Department of Political Affairs. The views expressed herein are those of the authors and do not reflect the official positions or opinions of the United Nations or the Government of Canada.

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Acknowledgements

The authors gratefully acknowledge the support provided to this project by the Mediation Support Unit, Department of Political Affairs, United Nations and the Government of Canada. We are particular thankful to Mr. Peter Barwick, the project liaison coordinator at the MSU. Finally, we would also like to express our gratitude to our colleagues Desirée Nilsson, Roland Kostić and Johan Brosché for their valuable input throughout this project.

I. Introduction

Making a negotiated peace between the warring parties has been a standard approach for how the world has handled conflicts since the end of the Cold War. There are many lessons to be learned from how a peacemaking party can act to contribute to conflict termination in ways that do not fuel a recurrence of conflict. This study examines a set of well-known and significant contemporary peace treaties and draws out some of the lessons that can be learned for future practices. More precisely, this report assesses practical and theoretical challenges from three comprehensive peace processes and their subsequent peace agreements. One case is the accord ending the 1992-95 war in Bosnia and Herzegovina: The General Framework Agreement for Peace in Bosnia and Herzegovina – the Dayton Agreement (also termed ‘The Dayton Accords’, ‘The Paris Protocol’, ‘The Dayton-Paris Agreement’, or DPA) formally signed in Paris in December, 1995. The second case is the agreement on the North-South conflict in Sudan: The Comprehensive Peace Agreement (CPA or ‘The Naivasha Agreement’), signed in January, 2005, and ending the war that started in 1983. The third case is the peace agreement ending the civil war that started in 1999 in Liberia: the Comprehensive Peace Agreement (also termed the CPA), signed in Accra in August 2003. The present report seeks to single out general features in these agreements as well as from the peace processes that preceded them. It is, thus, a report that builds on a series of separate analyses of these three cases (Kostić 2009, Brosché 2009, Nilsson 2009). The four reports constitute one joint project. It pulls together some of the insights generated in these reports as well as deliberations held in this project, notably the Uppsala Workshop that was held on September 21, 2009 with a group of experts covering the range of the topics the four reports address.¹

¹ The reports are presented separately. They were produced as part of this project, which began in February 2009, as cooperation between the UN Mediation Support Unit, New York and the Department of Peace and Conflict Research of Uppsala University, Sweden. The authors are grateful

Each of the three peace agreements has a distinct character although they share the characteristic of concluding complex conflicts that warrants a particular case study. For Bosnia and Herzegovina (hereafter BiH) it is the matter of reconciliation among the former warring parties and their constituencies. For Sudan it is the issue of power sharing, primarily between North and South. For Liberia the focus is post-war public security. Thus, the three cases are likely to help us in understanding a specific element in contemporary peace making that is crucial for durable peace. At the same time, other themes are embedded in these agreements, in particular aspects such as the management and reduction of violence; the establishment of general governmental authority; the issue of security sector reform, demobilization of former combatants and their reintegration into society; as well as a set of specific power-sharing components. Before entering into more detail, it is worth noting that there are many more aspects to be investigated in greater detail in all of these three peace agreements. However, here only aspects of direct importance for peacemaking have been identified. Thus, the study does not specifically enter into the causes of the war or into the causes of the peace per se.² We are pleased to limit our findings to singling out 18 lessons for peacemaking, what we call the Uppsala Recommendations, which hopefully are useful for crafting future peace agreements. They are presented in section 4 of this publication.

for the opportunity to work on this project and for the valuable inputs provided by the workshop. All four reports have been reviewed by the other members of the team, but still constitute separate products. The authors remain solely responsible for the views expressed. We are particular grateful to those that have provided feedback on this study, not least Desirée Nilsson, Roland Kostić and Johan Brosché.

² For recent overviews and studies on peace agreements, see: Mattes and Savun (2009) and Mezera, Pavicic and Specker (2009)

2. Peace Agreements Today

The Uppsala Conflict Data Program (UCDP) finds that 128 large and small wars have been fought in the world in the 20-year period 1989-2008. The overwhelming majority of these have been about intra-state concerns, mainly about the control over government or territory within countries. In 2008, there were 36 armed conflicts going on, only one being between two states. This means that 92 armed conflicts have been ended through victories, peace agreements, ceasefires or for other reasons.³ In the same period, UCDP reports that 175 peace agreements have been concluded.⁴ While many may have failed for intrinsic reasons or because of eruption of new armed conflicts, others have displayed qualities that made them stable. In fact, more than a third of all the conflicts could be said to have ended through negotiations and in a durable way. For the period 1946-2004, peace agreements and ceasefires are almost as common ways of ending wars as victories.⁵

Clearly, there are many different explanations why agreements are concluded in the first place, and which components that contribute to making them particularly durable. One important factor is the quality of the agreement. Does it address the pertinent issues of the conflict in such a way that the parties can live, recognize and co-exist with one another within the agreed framework and even develop it jointly for future cooperation? Another factor is the legality of the agreement. Although, the appearance of a legal standard remains largely undefined, the term peace agreement is widely used.⁶ For example, agreements often include legally styled structures including preambles, sections, articles, annexes, as well as legally influenced language, specification of parties, signatories,

³ Harbom and Wallensteen (2009).

⁴ The figure is higher than the total number of armed conflicts as there could be several peace agreements signed for one conflict. For UCDP data see www.ucdp.uu.se and datasets, as well as the database for information on particular armed conflicts.

⁵ Wallensteen 2007:28.

⁶ Bell 2006: 374.

and binding obligations. It is quite common that the warring parties consider the peace agreements as legal documents. However, as Bell points out, they do not easily fit within traditional legal categories such as a treaty, an international agreement, or a constitution.⁷ Thus, there is a question what defines a peace agreement and what makes a particular document legitimate. Largely the agreements are political commitments often requiring additional legal procedures to make them compatible with national law, for instance. Here we treat them as such obligations and the way they are negotiated, concluded and signed makes them central guiding documents for politics in the countries concerned.

Obviously the three agreements arise from varied conditions, and they give insights into different elements of peacemaking. Thus, we largely use the case of Bosnia to make conclusions on the problems of reconciliation, Sudan for the study of power sharing and Liberia for the issues of public security. However, they also share some common features. In order to situate the reader we are pointing to some parallel issues in the following section. For the specifics of each case, we refer the readers to the three accompanying volumes, by Roland Kostić, Johan Brosché and Desirée Nilsson, respectively. Following this we move to the 18 Uppsala Recommendations, drawn from the three cases, their communalities and differences.

⁷ Bell 2006: 378.

3. Features of the Three Peace Agreements

The three peace processes went on for a considerable period of time, as did the conflicts they were addressing. Each conflict was affected by a complicated pre-conflict history as well as the involvement of a number of domestic and intervening parties. In BiH, the negotiations took place between three Presidents and their foreign ministers (e.g. Franjo Tudjman of Croatia, Alija Izetbegovic of BiH and Slobodan Milosevic of Serbia) as well as a number of low-key representatives of the three main ethnic groups. In Liberia there were also three warring parties present in the negotiations, where two were formal rebel groups (the Liberians United for Reconciliation and Democracy, LURD, and the Movement for Democracy in Liberia, MODEL) and one party representing the Government of Liberia (GOL). Unlike Dayton, the peace process in Liberia also included a number of civil society organizations and political parties. In Sudan, there were two main warring parties, the government and the challenging rebel group (Sudan People's Liberation Army, SPLA/ Sudan People's Liberation Movement, SPLM). All three negotiations involved outside third parties in the final round of negotiations. All were concluded outside the country.

The three peace processes faced conflicts of different intensity and development. The war in Bosnia was shorter than the others, but may have been more intense, featuring modern classical war-style fighting including third party military interventions (e.g. by the North Atlantic Treaty Organisation, NATO). A number of peace proposals were presented by a number of external actors throughout the war (e.g. the European Community (EC) as early as April 1992). Despite such attempts, warring parties did not begin to reduce organized violence until an agreement was concluded between Bosniaks and Croats in early 1994, in the form of a partial peace agreement. Fighting with Serb forces in Bosnia continued until the agreement in Dayton was entered. The war in Liberia had started as a means to overthrow the incumbent government led by

Charles Taylor. Actual peace negotiations began prior to the formal ceasefire; at that time LURD and the MODEL had made advances towards the Liberian capital Monrovia, forcing the Taylor government into negotiations. As in Bosnia, the parties might have continued the war had not the international community intervened. For example, fighting was not interrupted while negotiations were going on, although a formal ceasefire had been signed. In Sudan the negotiation took place against a long history of war between the government (representing the North) and SPLA/M (standing for the South). The Naivasha process that resulted in the comprehensive peace agreement was an example of outside mediation more than a locally driven process. In all three cases, international mediation and facilitation was crucial for forging the agreements and ending the wars.

The peace agreement documents are strikingly different. The Dayton Peace Agreement (DPA) is very detailed and is, in fact, a complex and technical agreement. As described in the accompanying study by Kostić, the DPA consisted of a short General Framework Agreement and twelve Annexes. The annexes contain a number of provisions, including a general cease fire as well as the provision on issues such as arms reduction and boundary demarcation, human rights, return of refugees and property, an International Police Task Force, a Commission to preserve national monuments, etc. Particularly important in the DPA context is inclusion of the constitution and the power-sharing arrangements in the agreement. The DPA also regulates military aspects for a transition from war to peace, such as confidence building, regional stabilisation efforts and the deployment of an international peace force, IFOR, later becoming SFOR.

The Sudan CPA was, like the Dayton Accords, long and complex: 241 pages and annexing six previous agreements into one single document. However, as Brosché explains, the Sudan agreement could build on already negotiated agreements. While much of the Dayton Accords were negotiated in Dayton over a 20-day peri-

od, the Sudan CPA included agreements during three years: the Machakos Protocol from 2002 stipulating conditions for future talks; the Agreement of Security Arrangements from 2003 on the role of a partial peace agreement and the calling for cease-fire; the Agreement on Wealth Sharing from 2004 on the oil resources; the protocol on Power sharing from 2004 regarding an interim constitution, the creation of government in Southern Sudan (GoSS), and power sharing at the level of the central government; the Protocol on the Resolution of the Conflict in Southern Kordofan and Blue Nile States from 2004; as well as the Protocol on the Resolution of the Conflict in Abyei Area in 2004.

Of the three documents, the Liberia CPA was the least voluminous, although still comprehensive and complex in itself, as Nilsen demonstrates. It contains some 20 pages with four annexes, where one laid out the time-line for the implementation. The Liberia CPA included the ceasefire agreement, the establishment of the National Transitional Government of Liberia and the National Transitional Legislative Assembly provisions for a forthcoming national election, amnesty-related aspects, the establishment of a Truth and Reconciliation Commission, repatriation of refugees, human rights and humanitarian relief aspects.

Besides the complexity of each peace agreement, the three processes were also fairly distinct in the way they relied on timetables for implementation. This is a factor that seems to play an important role in contemporary peace making. For the warring sides in BiH, there was one major date that had to be met, namely that the Agreement called for elections to be held no later than nine months after ending violence. At the same time, the Dayton accord included a number of conditions or judgments that could disqualify signatory actors to the agreement, for instance if parties did not cooperate with the international tribunal on war crimes in The Hague (International Criminal Tribunal for the former Yugoslavia). The CPA for Liberia also included a timetable for national elections (to be held by October 2005) and that the elected gov-

ernment should take office no later than January 2006. In addition it stipulated that the disarmament programme was to commence within two months from the forming of the National Transitional Government of Liberia (NTLG). The Sudan agreements also had specific timetables, for instance for nationwide elections by July 2009; the attached Agreement on Security Arrangements established a cease-fire once the CPA was signed and that there would then be only two legally armed forces in the country (the government and SPLA). It also stipulated that the government had to withdraw 91,000 troops from the South within two and a half years, and the SPLA should withdraw its troops from the North within eight months. There were also time constraints built into the Agreement on Wealth Sharing, which included the provisions to share oil-revenues from Southern Sudan on a 50% basis (each) during the interim period.

With regard to actions taken to live up to stipulated obligations in the peace agreements, experiences vary among the three agreements. Much of this relates to the dynamics as well as the number of actors engaged in the peace process. In Bosnia, there was early resistance to some of the central provisions. Kostić elaborates on this in his report. For instance, at least two warring parties did not want to cooperate with ICTY. Another main problem was the lack of will to properly enforce the constitutional changes in 2001. In Liberia however, Nilsson shows that the warring parties and outside actors demonstrated considerable willingness to implement key provisions of the Agreement. First of all, the regional peacekeeping organisation Economic Community of West African States (ECOWAS), was quick in deploying forces. Following this, United Nations Mission in Liberia (UNMIL) forces began to arrive already in October 2003 as authorized by the UN Security Council. The deployment of UNMIL also provided for the national government and the assembly to be installed on October 14, 2003. Nevertheless, it is worth noting that the Disarmament, Demobilization, Rehabilitation and Reintegration (DDRR) pro-

cess was rushed, originally starting already on December 7, 2003, and later postponed to April 2004.

As we noted above, the three peace processes all involved outside mediators, domestic as well as international partners. The conflict in Bosnia was high on the UN and EU agendas. This brought about a number of the solutions that probably would not have emerged from the parties themselves. One was the US proposal to establish the Federation of Bosnia and Herzegovina. There was also the agreement on the Joint Statement of Political Principles signed in Geneva in September, 1995, the ceasefire of October, 1995, and the agreement on Eastern Slavonia (both in November, 1995). Many of these agreements, as well as the DPA itself, are associated with the US Assistant Secretary of State, Richard Holbrooke. Also the Liberia peace process and its implementation involved outside actors, in particular regional ones. Former Nigerian President Abdulsalami Abubakar was the principal mediator. For Sudan, a number of initiatives have been taken over the years. In 1989, former US President Jimmy Carter's mediation was unsuccessful. In 1992, the Nigerian President Ibrahim Babangida brought warring parties together but without success. One promising attempt was later made by the regional organization Inter-Governmental Authority on Drought and Development (IGAD) and Nelson Mandela (1997-2001) which ended with a partial agreement although negotiations later broke down. In 2002, the US and Swiss governments managed to broker a ceasefire. The Sudan CPA was concluded with the help of IGAD and Kenyan mediator General Lazaro Sumbeiywo as well as the Troika (US, UK, Norway). Some of the agreements, in other words, are associated with strong personalities that may have helped the parties forward. As we can see, in Bosnia and Sudan also earlier agreements were included in the accords.

With regard to the respective agreement, there was a varying degree of political will and actions taken to implement the agreement. For example, peace in Bosnia and Herzegovina has been kept since

Dayton due to the presence of international military forces on the ground, i.e. NATO and the European Union Force (EUFOR). As noted by Kostić though, much of the post-war stabilisation as well as the continued dialogue can probably only be maintained as long as external power is present and continues to ensure security. Seen differently, it is fair to conclude that most of the Dayton accord has been implemented – albeit many times in a very reluctant way. For the most part, measures have been taken by external parties rather than by mutual actions by local commitment from the three groups, thus displaying minimal political will (there are several signs of this, e.g. the exchange of Prisoners of War (POW) has been fairly successful as well as the territorial delineation under Inter-Entity Boundary Line, IEBL, but there is lack of agreement on the constitutional reforms and the future administrative division of the state, etc.). Another factor that had a significant impact on the Dayton implementation record was the 1997 decision by the Bonn Powers. It granted the Office of the High Representative (OHR) authority to remove politicians that violate Dayton provisions as well as to impose implementation of the DPA provisions (of which the establishment of the Constitutional Court was very essential as it defined the status of the constituent peoples in Bosnia). As noted by Kostić, the OHR was originally given the authority to implement the DPA and the Constitutional Court (DPA, Annex 4); nonetheless, after 2000 the OHR unilaterally expanded its original mandate.

For Liberia, as noted by Nilsson, the positive aspect of external involvement was its ability to secure and speed up the transition from war to peace. For example, the Economic Community of West African States Monitoring Group (ECOMOG) was quick to deploy and to bring violence to halt. ECOWAS also kept on having regular support meetings with the government in order to implement CPA provisions. Particularly important has been the continuous presence of UNMIL on the ground – a factor that underscores much of Liberia's successful post-war stability. Other

features include the DDRR programme which was implemented, although rushed and untimely initiated with several associated problems; civil society incorporation in the negotiations as well as in the post-war implementation period; President Ellen Johnson Sirleaf's Poverty Reduction Strategy, which has been an important step forward for the post-war reconstruction process; and finally the role of the Liberia Governance and Economic Management Assistance Program (GEMAP). On the other hand there were a number of negative aspects partly following the CPA. These include police corruption; problem with vetting procedures; unclear roles in the reconstruction of the Army (and other security agencies); as well as the problem of relying on private security companies for reforming the Army.

As seen in the study by Brosché, there are reasons for concern. The CPA is characterised by a number of unmet deadlines and slow measures to implement agreed provisions, including the prerequisite census for the elections to be held in 2007 (it was not completed until 2009); elections to be held in July 2009 (now re-scheduled for April 2010); delays in border demarcation between North and South; increasing inter-ethnic tension at a number of places across Southern Sudan; and finally a fear of a complete relapse to war. In all, much of the trust built during the CPA negotiations seems to have been lost. On the other hand there were also signs of willingness by the parties to implement the CPA. This has not least been seen by the fact that a number of Internally Displaced Persons (IDP) have been able to return; that the Abyei roadmap and national election commission was established in 2008 (although the Abyei roadmap was implemented only slowly); and that at least two of the three most violent clashes in Sudan between SAF and SPLA were indeed regulated by joint investigations.

This overview demonstrates that the peace processes had many dramatic twists and turns. There was never a straight line from the beginning of contacts, via talks to the final ending of the conflict.

In many cases, warring parties may have preferred to continue the war, hoping for a victory, but were barred by domestic pressures, economic considerations, international influences and thus also seeing some benefit in the peace accords that were outlined. There were alternative ways out other than war, and the parties preferred in the end to sign on to this and thus commit themselves to live with the documents for peace.

Let us thus try to draw some general recommendations from these experiences.

4. The Uppsala Recommendations for Peacemakers

Here we present 18 recommendations for how a peacemaker can act in peace negotiations to move towards an agreement with lasting qualities. The following recommendations are generalized points building on the three peace processes as well as key issues addressed in each of them: reconciliation, power sharing and public security. The three accompanying reports by Brosché, Kostić and Nilsson contain additional and significant recommendations that the reader is encouraged to study.

In these recommendations, we are referring to negotiations that primarily deal with the solution to the central issues of the conflict, that is, the basic incompatibility. Pre-negotiations or cease-fire talks are likely to face concerns similar to those of focused peace talks, but here we are dealing with the drafting of what may amount to the final agreement ending an armed conflict. Furthermore, the lessons learned are relevant for different stages of the negotiations, from preparations to implementation. We address them as general guidance to a negotiator mandated to facilitate and mediate a particular conflict with traits common to the three cases studied here.

A. The peace negotiation process

I. Examine all previous peace agreements in the conflict and integrate lessons into the new peacemaking efforts

Experiences suggest that there are likely to be common patterns in most conflicts. Agreements or 'understandings' may have been worked out directly between some parties in early stages of the conflict; even when parties change, earlier deals may remain relevant; agreements may have been negotiated with strong international involvement. Such agreements may constitute significant

documents as they demonstrate actual or possible concessions and arrangements. It is important that the negotiator is aware of, as well as up to date on, this. They may also work as benchmarks for how the parties act in the new situation. This means that the peacemaker can see directly what the conflict is still concentrated on, and the remaining issues are likely to be the ones closest to the core of the conflict. Previous practices may also make contemporary negotiations easier. On the other hand, there may also be some dangers in this. Parties to the conflict may be different, or it may lead the parties to go back to an earlier arrangement that may have been overtaken by events (for instance, the framework agreement for Bosnian Croats and Bosniaks that was included in the Dayton agreement).

This also suggests that the negotiator needs to be constantly up to date on the text that is under negotiation, in order to be able to add innovations and try out new formulations. Moreover, it also means that the text – be it a draft, an agreement in principle with brackets for unsolved issues, or even a declaration – is of central concern to the mediator.

2. Be aware of the trade-off between human urgency and agreement detail

Any armed conflict creates strong human urgency and thus calls for a speedy solution. It is therefore vital to move negotiations forward as quickly as possible. The mediator could, we believe, use this as leverage on the parties. However, the mediator also needs to be careful in dealing with urgency. After all, it is the parties that suffer from the armed conflict and would have the incentive to move towards settlement. But warring parties may reverse the argument to their advantage and argue that “we have lost this much already, so we are prepared to hold out to get this particular concession”. Urgency may not move the parties. The mediator needs to keep his/her head cool so as not to hurriedly accept a position

of one side that will run counter to what the other side asks for. In particular, human urgency needs to be balanced with the need for a carefully designed agreement. Too loose a framework can easily lead to ambiguity in the negotiation process, or may defer difficult choices. As the moment of finalizing a peace agreement can also be one of confidence, it may be the time for grappling with difficult choices as part of the negotiations rather than afterward.

Often a cease-fire can reduce the urgency of a settlement, but also this has its dangers. It may result in a protracted stalemate and reduce the parties' interest in a long-term settlement. It may also be considered a temporary pause, where the parties take the opportunity to replenish their arsenals and troop formations with the goal of restarting the conflict. The mediator needs to pay attention to preceding ceasefire agreements, if there are any, to see how they were negotiated and what actions the parties then pursued. If the record demonstrates a serious search for peace, then a ceasefire may be a guide for a future settlement. Thus wordings as well as aims of these arrangements could help the mediator in getting more comprehensive agreements. In such circumstances, a ceasefire may also open up for positive reconciliatory gestures. For example, the conflict in Sudan saw the creation of ‘humanitarian corridors’ for delivery of aid and establishing contacts for future talks. This was important although the corridors did not directly lead to breakthroughs in peace talks. On the other hand, if a ceasefire is called for without any real commitments, the mediator should carefully consider parties' willingness to participate in serious peace talks.

Finally, it is worth considering that when circumstances or decisions point the process towards an agreement that is not detail specific, it is important for the mediator to strive to include guiding principles that will give clarity for the implementation phase. A mediator should seek to envision “sticking points” in a post-agreement political process, and as much as possible, suggest language that will overcome such difficulties.

3. Balance local needs and international responsibilities

A theme that confronts a contemporary mediator is the potential clash between the situations in the local arena with all its specific traits and the responsibilities that follow from international treaties (such as agreements on human rights, humanitarian law, or trade agreements). In Bosnia the protection of national monuments is a case in point. The government for example, may previously have subscribed to such commitments; the opposing warring party may not easily accept them. This means that the mediator both has to adapt the international rules to the local situation and educate the warring parties about their importance (with regard to BiH though, the problem was not the protection of monuments per se but referral to the legal concept 'national' while all monuments in BiH are monuments of Serbs, Croats and Bosniaks). Not only will such obligations and principles commit parties to peace, but also tie them to particular responsibilities. Resort to such international principles also helps negotiations move forward, as many issues are already formulated and they are easy to incorporate in the final agreements. It is more problematic if the parties do not find that they are relevant in their context. The inclusion of human-rights provisions has encountered such opposition.

4. Access and transparency: the role of the civil society

An issue that has gained increased attention in recent peacemaking is the role of other parties than the main combatants. The negotiations in Dayton and Naivasha were both 'classical' in the sense that only the high representatives of the parties and the third parties had access to the negotiations. In Accra, however, women civil society organizations played a key role in demonstrating the urgency of a solution, and consistently approached the parties as well the mediator. For instance, the civil society representatives insisted that the presidency of the interim government should not

be given to any one of the warring factions. In the Bosnian case, Serb and Croat representatives were largely kept uninformed by the US mediators of what was negotiated, and they refused to sign the Dayton accords.

This experience suggests that transparency is important. Hence, it should be known to the outside who participates in the talks, the schedule of meetings, the issues that are under debate, positions of the parties and other significant matters. An important aspect for the mediator to consider is whether the text under negotiation should also be published even as the talks continue. There are arguments in favour of some degree of confidentiality so that the parties can make compromises, but at the same time these may affect the long-term durability of the agreements that in the end affect entire societies. Regardless of how this is managed, it is obvious that immediately after a final agreement is reached, it should be published and disseminated as widely as possible.

When an agreement is to be signed this should be done by the parties themselves. We believe, however, that civil society should be among the witnesses, for instance, in the signing ceremony. This is a way to demonstrate that an agreement has wide national support, in much the same way that international representation nowadays is a customary part of such procedures.

In general however, having civil society organizations too much engaged in the negotiations could not only affect their neutrality, but also weaken their position as societal watchdogs in post-war peacebuilding. Civil society needs to play its role as a pressure group and a monitor of the implementation of agreement provisions. In the end, the responsibility for carrying out the agreement rests with the parties. If they are aware of the presence of civil society, media and other forces in society, they will have to carry out what they have committed or face substantial loss of credibility.

Also, the mediator needs to keep in mind that when too numerous members of civil society, with different and perhaps unclear mandates, are brought into a process, it may danger to fragment negotiating dynamics, and result in blurred responsibility for implementation. Balance is needed.

Another way of having the civil society involved in peacemaking is to train organizations in conflict resolution workshops parallel to the peace talks as well as in the post-war phase. Such training could cultivate new thinking on ways to solve future disputes (at least on a local level). The mediator, however, should think carefully about the type of civil society organizations that are invited. Not all civil society organizations have a high degree of accountability and legitimacy.

5. Have women involved in the negotiations

The delegations in the agreements we have studied consisted almost exclusively of men. This is remarkable, particular for the agreements of the 21st century, as the UN Security Council Resolution 1325 (2000) asked for increased representation of women in all aspects of peacemaking. The exact share of women and men in negotiations cannot be regulated, but each delegation should strive to find as equal a representation of each sex as possible as well as bringing in gender expertise into the negotiations. Thus, the mediator first of all needs to demonstrate good performance on this score. For instance, it is worth noting that MARWOPNET, a Liberian women organization was invited to participate in the peace talks in Liberia from the beginning. The presence of gender mixtures is likely to affect talking climate as well as open up new sources for ideas to bring to the agenda. From the three cases, we cannot conclude what may have happened with a more balanced representation, but evidence from other walks of life demonstrates that transparency and legitimacy increase the better the representation from both genders.

Besides having women involved in the negotiations, it is important to make strong efforts to bring women into peace processes as central mediators. To date, the UN has not appointed one woman as the key peace negotiators.

6. Do not allow a few negotiators to control the process

In some situations it can become problematic that a few leading negotiators completely dominate the deliberations. There is also a danger that one central negotiator will be involved in a number of related, but undocumented, understandings with the opponent that others may not be aware of. This applies to the warring parties as well as to the mediators. Later on, there can be disagreements on what a particular third party actually promised outside the formal negotiations. Everybody is replaceable, and, in fact, is likely to be replaced sooner or later. Thus, the negotiations need to be conducted in such a manner that many more negotiators are aware of what takes place: which informal understandings have been reached (and which ones were not concluded, as there may be unfounded rumours of secret deals), what is the agreed interpretation of particular words in the document, etc. If only a few individuals dominate the proceedings it makes the process vulnerable to sudden team changes. It also affects implementation, as very few will know what exactly was meant by particular formulations in the final document. The prime example in this study is the role of the SPLA/M leader John Garang for the peace process in Sudan. His sudden death soon after the agreement affected its implementation, for reasons which had to do with his central role in the negotiations and in the resulting government.

Another important aspect is to keep negotiating actors involved and responsible in the implementation phase. In the Sudan CPA process, for example, actors heavily engaged during the negotiations (such as the IGAD and the Troika) were replaced after the agreement was signed, which led to crucial loss of time in

the implementation phase when trust had to be built up between new actors. It is advisable that outside actors involved in the negotiation process should be present in the implementation phase.

7. Open separate negotiations tracks for 'sidelined' issues

Many times, there are neither the resources nor the political will to tackle all issues and incompatibilities of an armed conflict in one singular process, not to mention one session. It is therefore recommended that the mediator consider opening dialogues for 'sidelined' issues. Experiences from many peace negotiations suggest that it is not unusual for the warring parties and the mediator to concentrate on settling particular key differences while postponing others. This may appear rational during the early negotiation phases but in fact prove more problematic in the longer term. Disagreements may arise, as postponed issues are likely to be linked to the settled ones. For example, the CPA of Sudan did not take up the Darfur region and the Dayton Accords did not deal with Kosovo. This sparked fears in these regions of either being marginalized or subject to secret arrangements. A different experience is the one of East Slavonia that successfully was dealt with in a separate process but the agreement was made in the Dayton Accords. This track led to further agreements as well as to a separate peace keeping mission. A way to solve the problem of 'sidelined' issues is to invite the relevant parties to parallel processes while firmly de-linking these issues from the main negotiations. Although parallel tracks can complicate talks, other parties are reassured that their issues will be taken seriously, once the major conflict has been dealt with. Thus, a peace process is turned into a sequence of events, where some issues are dealt with before others, but no issue is left out.

8. Consider when the time is ripe for war crime tribunals, truth commissions, and reconciliatory measures. Do not neglect this issue, and make sure it enters the peace agreement

Views are divided on how war crime issues should be dealt with as part of peacemaking. In the three cases, this has been dealt with differently: earlier and separate from the peace talks (as in the BiH case), mentioned but postponed (in Liberia) and completely separate (in the Sudan case). In principle, war crimes are misdeeds that should be pursued. Parties should early on agree to this, not least for settling past differences and making reconciliation more likely. However, it is not likely to be productive to have this as a precondition for negotiations. A mediator must therefore guard against the inclusion of language or commitments that would impede subsequent efforts to promote transitional justice. Rather, a final agreement may indicate the time in the post-conflict phase when these issues should be taken up (for instance, following some key events, such as a presidential election, a referendum on the constitution, etc). It is for the mediator to assess when such issues can be put forward in the negotiation process. Besides dealing with war crimes, peace agreements can also lay foundations that later support and assist later transitional justice efforts – truth commissions, preserving archives/records, providing capacity to victim's support groups, strengthening the justice system, etc. Finally, it is worth highlighting that a number of armed conflicts today involve child-soldiers. Their rights and their protection deserve particular attention.

9. Consider the legal status of the agreement

A peace treaty is a blend of political compromises and legal adaptations. The mediator therefore needs to balance the two. Primary attention should be on getting the parties to commit to a durable

peace. Usually, political considerations precede legal dimensions at the initial stages of negotiations. Legal provisions can often be worked out once violence has stopped. However, the mediator has to consider, for instance, what is possible within existing constitutional frameworks. If constitutional changes are necessary, this may affect implementation and, thus, the parties will have to commit to pursue needed measures.

The mediator also needs to consider the role each of the separate treaties that often constitute the settlement has in relation to the final agreement. Some times partial agreements have been signed when the parties were still engaged in fighting, sometimes agreements were made to create conditions for future talks. Thus, there is a need to consider what legal status the agreement will have. In some negotiations, the peace agreement provides for a future constitution while other agreements provide general principles for future co-existence. The type of agreement determines expectation as well as outcome and general character of the peace process. The legal implications will vary accordingly.

B. Dealing with the basic disagreement (the incompatibility)

10. Consider carefully whether the peace agreement should tackle the key incompatibility directly or lay out a process for its handling

A peacemaker should carefully consider the type of agreement that is being negotiated. There are different types of agreements such as partial peace agreements, agreements on talks about talks, framework agreements, or even agreements consolidating future state structures. The mediator needs to be clear and open with his/her intentions given the type of negotiation that is being pursued.

Clarity of direction makes it possible to stem efforts by some to turn the talks into a spoiler's arena, only conducted for demonstration effects, or make them into a battle scene for local politicians. Both in the cases of BiH and Sudan there were several agreements made at different moments in time, thus constituting a process for 'ticking off' issues one by one. In Liberia, however, there was one comprehensive agreement that included all major issues (although a ceasefire agreement became part of the final agreement). Such an all-out effort may succeed (as in Liberia), but may also threaten to make any agreement more difficult. A step-by-step approach runs the opposite danger: the first implemented step may be the last. The agreements on Sudan and BiH fall between these extremes. The mediator needs to make his/her approach clear from the outset.

11. Power sharing includes many levels and dimensions: the mediator needs to be careful in limiting its extent and have provisions for transparency

The Sudan as well as the Dayton agreements point to the complexity of power sharing arrangements. There are many levels of power sharing, and some look more like power division: "I get to rule here – you rule there" making it difficult to pursue one integrated governmental policy. A federal or semi-federal structure may allow for a vertical and territorial division of power, where different actors rule at different levels or in different provinces. Thus, embarking on power sharing can easily result in reduced oversight, less opposition, less transparency and less accountability – all aspects that the mediator should aim to avoid. In other words, power sharing may stimulate corruption, unless there are strong checks-and-balances outside the political system (i.e. independent judiciary, media, civil society). It is important that the peace agreement reduces as much as possible the chances for the parties to abuse the period in power. This also means that a national government of power

sharing, if possible, should be limited in time, for instance, for a stipulated and specific number of years, or until elections can take place. The experience of Sudan as well as Liberia suggests the perils with transitional regimes. Even clauses for short-term tenure may be hazardous as they can stimulate actors to develop a culture of 'grabbing as much as possible'. However, in many internal conflicts, power sharing is often the only way out as a measure of sustainable peacebuilding. What becomes important thus is the type of arrangement that is being established. Yet, there are examples of long-term power sharing governments that function in acceptable ways, such as in Burundi and Lebanon or pre-war BiH. In BiH however, the power sharing arrangements that were set up in Dayton were very different from those that were traditionally practiced by Serbs, Croats and Bosniaks. Liberia demonstrated a different version in this regard, as the chairmanship (the interim highest office) was reserved for a representative of the civil society and it was agreed that this would last for two years. It is likely to be true that the longer the arrangement persists, the more it will turn in to a privileged system that may generate new conflict in itself.

An interesting idea, learning from the Sudan agreement and presented by Brosché, is that the negotiator should be hesitant to include exit options in power sharing deals. One positive asset of power sharing is that it can build trust between former enemies, but there is a danger that this option will reduce the incentives for working together. In practice, this refers to the possibilities for South Sudan to leave Sudan, which, however, was a key stipulation in ending the war and without such a provision this peace agreement would not have happened. Unfortunately this has had severe effects for the implementation of the CPA, as the referendum and the widespread feeling that the South will vote for secession, has decreased the commitment for proper implementation of the accord.

12. Addressing immediate public security by concentrating on improvements for ordinary citizens

For citizens in a country after a war, public security is likely to be of paramount concern. Thus, the reconstruction of the armed forces, police and judiciary will be particularly crucial as this action is the first tangible impact of peace. It is not only a matter of having armed forces integrate, but also that it has to be done in a way that improves overall security in the country. An important element is the presence of an international peacekeeping operation with clout, and that it remains in place for a sufficiently long time. Here, BiH, provides an example where a force is still in place close to 15 years after the first international deployment. Another case is Liberia. It is worth keeping in mind that some conflicts involve large populations; other conflicts take place over wide territorial areas. This will affect the mandate, resources, success and failure of peacekeeping missions and, in turn, overall public security.

In addition, it is important that army and police reconstruction is included and clearly defined in the agreement. This process has to include new recruitment as well as legitimate vetting procedures. It is also important that the official armed forces are under strong civilian control. A remarkable development has been the one in Liberia, where a US-based company has been in charge of the reconstruction of the Army. This appears to be an experiment of questionable value as it reduces transparency and accountability.

As noted, security is not restricted to the police and armed forces or to the disarmament issue only. The judiciary, as well as legislative institutions, play important roles in increasing public security. Although it has been outside the mandate in this report to look more carefully at these aspects, they do involve significant challenges, and require their own scrutiny. Not least, it is important to develop models combining national and local ownership of the security apparatus. Such models should include ways of combining

transparency, accountability and efficiency with legitimacy while preventing the security institutions from again becoming resources for local or national parties bent on changing society by force.

13. Paying attention to post-war reconciliation

The inclusion of transitional justice measures such as international and national war crime tribunals in combination with truth seeking mechanisms is desirable. Components also include procedures for vetting of security forces; opening of archives; having credible provisions for reparations and governmental transparency and accountability. However, the mediator needs to be aware that post-war reconciliation is a wider complex societal process that is dependent on progress on a range of societal issues. For example, in BiH, unresolved constitutional issues have more profound effect on inter-group reconciliation, than the effect of the trials at the ICTY. In other words, a transitional justice mechanism – although a desirable complement to an overall peace agreement – cannot alone lead to reconciliation. Similarly, commissions for truth and reconciliation may have effects of re-traumatization without including measures of healing. The underlying security concerns have to be addressed in such ways that there is a measurable reduction of fear in the population at large, and in particular groups.

14. Make the agreement operational without micro-managing conditions for peace settlement

An agreement has to function in practice. It is easy to make stipulations, for instance, on power sharing without thinking through how this will work in day-to-day affairs. What makes sense in a negotiation, may not always work in practice. Many issues therefore have to be left to the implementation phase, as agreements cannot be overburdened with details. There is sometimes an ex-

pectation that the agreement in itself creates sufficient confidence among the parties for them to actually carry it out. When the provisions become difficult to implement it may partly be due to the formulations in the agreement, partly to the inability of the parties to develop their own solutions, building on the spirit of the agreement. It is important that the negotiator raises the question with the parties: How is this going to work in practice? After all, the parties, not the negotiator, are going to live with the negotiated terms for a long time to come. However, this does not exclude the possibility that the parties may in fact come back to the third party and ask for advice on implementation. Thus, also the third party will have to think about the practical side of implementation. In the end then, to focus on the operative aspects of an agreement is an integral part in achieving durable peace both with regard to daily activities and expected political dynamics.

In fact, interpretation is likely to be an issue, even if many issues are foreseen in an agreement. Thus, a good agreement should have a clause that stipulates what to do in case of disagreement in implementation. It may be, as just suggested, the mediator. It may also be, as in the case of Liberia, regional organisation such as ECOWAS, that gives credible support the peace negotiations and assistance to the parties in resolving disagreements in the implementation phase. In Sudan, the negotiation teams (IGAD and the Troika) were replaced and thus valuable time was lost for implementation. In the BiH case, however, this may have been too strong: too much power may have been vested in the Office of the High Representative, depriving the parties themselves of the responsibility to find agreement among themselves, even reducing overall transparency in implementation.

C. The Negotiation Environment

15. Keep the international community on your side but do not let it overpower the peacemaking momentum

Major powers and neighbours are likely to have a great interest in any negotiations. Furthermore they have a tendency to view the outcome, not only from the peace interest of the global community but also from a diversified set of perspectives, not least that of how the peace settlement will affect their interests in the region. In Dayton, external actors had a very strong interest. For the negotiator this is a fact that can only be dealt with by keeping these actors continuously informed. In general, outside actors need also to be involved (e.g. informed) as they will have to be part of the final agreement, and their support in the post-accord period may turn out to be crucial. Peacekeepers may be needed, as well as development aid, support for disarmament, access for relief and reconstruction, and they are the ones to provide it. It is also likely that they can take their own complementary measures outside the negotiation framework, for instance by putting pressure on particular actors, supporting war crime cases against others, cutting flows of weapons or by making economic deals. All such actions are normally outside the control of the negotiator, and that needs to be clear, so that such actions do not compromise the integrity of the mediator.

16. Strengthen international mediation in international organizations and in governmental institutions

As international institutions, such as the UN, or regional organisations such as the EU and the AU, in recent years have begun to take up increasingly difficult and complex mediation support functions, there has become a stronger need to institutionalise mediation-support capacities also at member state levels. The UN could

invite its member states to establish similar coordinating functions in member state capitals, for example by establishing mediation coordinators. Comparable roles have been taken up in related fields, for instance, by the establishment of sanctions and counter-terrorism coordinators. A mediation coordinating function at member state level could institutionalize experiences and more easily pull together tools and resources for mediation support initiatives around the world. Not only would this be an advantage for the particular member state, but also for the UN (and other organisations), and ultimately for quicker and more refined settlements of international disputes.

D. The post-accord period

17. Make implementation attractive through continued international support

Several of the cases point to the importance of visible peace dividends for the country as soon as possible after an agreement has been reached, for example the significance of improved public security. It is also essential that the international interest for the situations does not wane as soon as an agreement has been signed. In fact, as expressed in the study of Sudan, the signatures are just the beginning and not an end in itself of a peace process. This means that the major powers, neighbours and donors have to keep attention to the issue to make sure the agreement can be implemented and the peace restored in a lasting way.

The agreement is likely to include provisions that require capacity building. After a war, few parties are likely to have resources for this. Outside assistance is therefore crucial. Thus, for the mediator it is important to keep the donor community involved and supportive. The UN has recognized the importance of this and instituted a Peacebuilding Commission assigned with the task of

supporting a country in the immediate post-conflict period. This Commission has only taken up a few cases so far and is definitely in need of more resources. It may also be important that other international organizations institute peacebuilding units and set aside resources for the post-conflict activities that are necessary to sustain the newly won peace in fragile societies.

18. Connect peace agreements to shared values of justice and fairness

In the midst of negotiations, there is usually a concentration of attention on strategic incompatibilities and differences. The peace broker could alter and transcend such negative aspects by steering the parties to think of common values and norms that unite them. This may involve the benefits of peace for economic development as well as from being reintegrated into the international system as a respected member. A shared history may also be something of value. With regard to justice and fairness the mediator should be aware of, and encourage warring parties to consider, previous historical records and methods through which disputes have been settled before. Sometimes there are such dispute-settlement mechanisms that may be more apt for a particular conflict. There may be traditional ways actors relate to one another which could be activated and seen as legitimate (for instance in BiH). One way is also to look for experiences from other peace processes. The mediator needs to be aware of the difficulties on how to agree to common values. However, an agreement based on shared values is likely to be easier to implement and may have a better chance of becoming durable.

References:

Bell, Christine 2006. "Peace Agreements: Their Nature and Legal Status", in *The American Journal of International Law*, vol. 100, no. 2, pp. 373-412.

Brosché, Johan 2009. *Sharing Power-Enabling Peace? Evaluating Sudan's Comprehensive Peace Agreement*. Uppsala University and the UN Mediation Support Unit.

Fortna, Virginia Page 2003. "Scraps of Paper? Agreements and the Durability of Peace", in *International Organization*, vol. 57, no. 2, pp. 337-372.

Harbom, Lotta and Peter Wallensteen 2009 "Armed Conflicts, 1946-2008", in *Journal of Peace Research*, vol. 46, no. 4, pp. 577-87.

Kostić, Roland 2009. *Reconciling the Past and the Present: Evaluating Dayton Peace Agreement 1995*. Uppsala University and the UN Mediation Support Unit.

Mattes, Michaela and Burcu Savun, 2009. "Fostering Peace After Civil War: Commitment Problems and Agreement Design", in *International Studies Quarterly*, vol. 53 (2009)

Mezzer, Marco, Michael Pavicic, and Leontine Specker 2009. *Governance Components in Peace Agreements: Fundamental Elements of State and Peace Building?* Netherlands Institute of International Relations Clingendael: The Hague.

Nilsson, Desirée 2009. *Crafting a Secure Peace. Evaluating Liberia's Comprehensive Peace Agreement 2003*. Uppsala University and the UN Mediation Support Unit.

Wallensteen, Peter 2007. *Understanding Conflict Resolution* (London; Thousand Oaks, Sage: 2nd ed.)

Other sources consulted:

www.ucdp.uu.se