NORWEGIAN MINISTRY OF FOREIGN AFFAIRS

Centre for Humanitarian Dialogue

Mediation for peace

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On Peacemaking: A Decade of Reflections 2006-2015

A Compendium of Oslo Forum Background Papers

Improving the mediation of armed conflict

A global series of mediation retreats

The Oslo Forum is the leading international network of conflict mediation practitioners. Co-hosted by the Centre for Humanitarian Dialogue (HD) and the Royal Norwegian Ministry of Foreign Affairs, the Oslo Forum regularly convenes conflict mediators, peacemakers, high level decision-makers and key peace process actors in a series of informal and discreet retreats.

The Oslo Forum features an annual global event in Oslo and is complemented by regional retreats in Africa and Asia. The aim is to improve conflict mediation practice through facilitating open exchange and reflection across institutional and conceptual divides, providing informal networking opportunities that encourage coordination and cooperation when needed, and allowing space for conflict parties to advance their negotiations.

Sharing experiences and insights

Mediation is increasingly seen as an effective means of resolving armed conflicts and the growing number of actors involved testifies to its emergence as a distinct field of international diplomacy. The pressured working environment of mediation rarely provides opportunities for reflection. Given the immense challenges in bringing about sustainable negotiated solutions to violent conflict, mediators benefit from looking beyond their own particular experiences for inspiration, lessons and support.

The uniquely informal and discreet retreats of the Oslo Forum series facilitate a frank and open exchange of insights by those working at the highest level to bring warring parties together. By convening key actors from the United Nations, regional organisations and governments, as well as private organisations and prominent peacemakers, the retreats also provide a unique networking opportunity.

Where politics meets practice

Participation is by invitation only. Sessions take the form of closed-door discussions, and adhere to the Chatham House Rule of non-attribution. Sessions are designed to stimulate informed exchanges with provocative inputs from a range of different speakers, including conflict party representatives, war correspondents, outstanding analysts, thinkers and experts on specific issues.

Participants have included **Kofi Annan**, former Secretary-General of the United Nations; **Jimmy Carter**, former President of the United States; **Aung San Suu Kyi**, General Secretary of the National League for Democracy in Myanmar; **Lakhdar Brahimi**, former Joint Special Representative for Syria of the United Nations and the League of Arab States; **Juan Manuel Santos**, President of Colombia; **Martti Ahtisaari**, former President of Finland; **Thabo Mbeki**, former President of South Africa; **Olusegun Obasanjo**, former President of Nigeria; **Mohammad Khatami**, former President of the Islamic Republic of Iran; **Gerry Adams**, President of Sinn Féin, and **Fatou Bensouda**, Prosecutor of the International Criminal Court. The Oslo Forum is proud to have hosted several Nobel Peace Prize laureates.

The retreats refrain from making public recommendations, aiming instead to advance conflict mediation practice.

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The Centre for Humanitarian Dialogue (HD) is a private diplomacy organisation founded on the principles of humanity, impartiality and independence. Its mission is to help prevent, mitigate, and resolve armed conflict through dialogue and mediation.

Editors: Katia Papagianni, Paul Dziatkowiec, Christina Buchhold, Elodie Convergne

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Foreword

Since 2003, the Centre for Humanitarian Dialogue (HD) and the Royal Norwegian Ministry of Foreign Affairs convene the Oslo Forum, an informal and discreet retreat for conflict mediators, peacemakers, high level decision-makers and key peace process actors.

What started out as a small retreat with only a handful of mediators has developed into an annual gathering widely regarded as the leading international network in the field. The Oslo Forum provides informal networking opportunities that encourage experience sharing and cooperation, and allows space for conflict parties to advance their negotiations.

Each year we have asked thinkers and peace process actors to share their analysis on the different facets of mediation and to offer insight into ways to improve peacemaking practice. Designed to inform discussions at the retreat, the Oslo Forum Background Papers have traditionally been distributed with other material prepared exclusively for participants of the Oslo Forum. For the first time, this publication gathers some of the most noteworthy papers and makes them available to a wider audience.

Oslo Forum Background Papers provide a collage of reflections from our Oslo Forum network, and unique insights into the challenges of peacemaking. They also show the strides we have made since the Oslo Forum's inception more than a decade ago, as the mediation field becomes more structured but also diversified. At the same time, some of the thorniest issues mediators are faced with when designing peace processes and reaching sustainable settlements persist over the years.

Alvaro de Soto and *President Juan Manuel Santos* of Colombia open this compilation by sharing their experience of **participating in a peace process**, from a mediator's and a conflict party's standpoint respectively. Their contributions give a glimpse of the dilemmas peacemakers are faced with and of how conflict parties need to develop a shared vision to reach peace.

Richard Gowan, *Bruce Jones* and *Thant Myint-U* then reflect on the challenges and opportunities **the United Nations** confronts when mediating in today's conflicts. Unprepared for the current international context, the organisation struggles to adapt and to maintain its independence from Member States. But it is not short of options to maintain its prominence in the field, notably by maintaining flexibility and reaching out to other mediation actors.

The difficult question of how to deal with **justice in mediation** is then addressed by *Prosecutor Fatou Bensouda* of the International Criminal Court and *Laura Davis*. They examine the complex interplay between peace and justice and the various tools at the mediator's disposal when addressing justice issues in peace processes. They argue that, while closely collaborating, mediation and justice actors need to remain independent from each other.

In the next section, *Alice Wairimu Nderitu*, *Jacqueline O'Neill*, *Thania Paffenholz*, *Darren Kew*, *Anthony Wanis-St. John* and *Antonia Potter Prentice* demonstrate the importance of **including women and civil society groups** in peace processes, as it increases their chances of success and enables them to reach more sustainable solutions. The authors provide guidance on how to foster inclusion and overcome the barriers to adequate representation of all relevant groups.

As *Sara Hellmüller, Julia Palmiano Federer, Matthias Siegfried* and *Hugo Slim* highlight, mediators operate in an increasingly dense **normative framework**. In this context, they need to respect a set of values, principles and good practices, but also prioritise among the different bodies of norms and adapt to the local context.

Not all issues are settled with the signing of a peace agreement, and even more daunting challenges await in **the implementation phase**. *Elizabeth Cousens*, *Comfort Ero* and *Katia Papagianni* therefore make the case for the mediator's continued engagement in the transitional period, as s/he needs to work with the national institutions and, in some cases, combine his/her efforts with those of a peacekeeping mission.

I would like to express my gratitude to all these contributors who have been kind enough to share their insights and wisdom, as well as for their ongoing contributions to the Oslo Forum community and the mediation field in general. As we look forward to the next Oslo Forum in June 2016, let us use the time ahead to put their insights and collective expertise to practical use in the pursuit of peace.

David Harland
Executive Director, Centre for Humanitarian Dialogue

A mediator's view from here: vision, strategy and other elements of peacemaking

Alvaro de Soto

2007

As I leave the UN after 25 years, my colleagues at the Oslo Forum have asked me to share some thoughts on the role of vision in a peacemaker's work. The thoughts below have inevitably strayed into strategy and some other elements in connection with the peace processes I have known. Perhaps they could serve as a starting point for a useful discussion.

During the El Salvador negotiations I was accused of having no strategy, and, when I developed one for all to see, of needlessly prolonging the negotiation and postponing the end of fighting by shooting for the moon. In the Cyprus negotiations, I was blamed for not allowing the parties to negotiate, and for seeking to impose a settlement on the parties. In the Israeli-Palestinian conflict the conventional wisdom is that everybody knows what the solution consists of, and it's just a matter of getting there – as Shimon Peres puts it, "yes, there is light at the end of the tunnel. The problem is that there is no tunnel." Go figure. I am not at all sure whether my take on the requirement for a vision or lack thereof is of universal application, but I here set forth my comments.

> *"A mediator should approach his mission with humility and respect. He should certainly not arrive with a readymade, shrink-wrapped formula."*

To begin, it should be stated that there are cases in which a vision – at least on the part of the mediator – can be dispensed with. For example, any mediator worth his salt will realize when a conflict simply does not lend itself to solution, at least at that particular moment, or perhaps permanently. Absent a major change in the context that will open up possibilities previously not available, such a conflict can at best be managed, i.e. understandings can be reached, tacitly or explicitly, under which the conflict will be contained in a box of its own – for example, since the late 1990s Greece and Turkey have by and large agreed not to allow the deadlock on Cyprus to sour the rapprochement between them. Or, measures can be agreed to soften the impact of a conflict – the agreements on exchanges of prisoners, non-bombardment of purely civilian targets, and the establishment of a mechanism to be triggered in cases of accusations of use of chemical weapons, brokered by UN Secretary-General (SG) Pérez de Cuéllar during the Iran-Iraq war of the 1980s, is a case in point.

Perhaps truces for certain purposes – e.g. massive vaccinations – can be arranged as confidence-building measures during wartime. These would be palliating measures while awaiting the necessary change in the context. The classic rationale behind peacekeeping is to interpose neutral forces to provide a circuit breaker, political space and breathing time to address the underlying issues; unfortunately there is no assurance that this breathing space necessarily comes accompanied with the conditions needed to broker a settlement; Cyprus

and the Western Sahara are well-known examples to the contrary. My point is that in such cases the question of vision is largely superfluous.

The need for vision arises, if at all, in cases where conditions are given for looking beyond a mere ceasefire and pursuing a comprehensive solution – one that encompasses the full range of issues that need to be addressed so as to ensure that it is durable over the long-term – that is, where a conflict is ripe for resolution. I will therefore not deal with conflict management situations.

As a general proposition, a mediator should aspire to develop, as early as possible in a negotiation, for his own reference, a broad vision of the overall solution to a conflict, as well as a strategy to bring it about. The purpose would be to establish a frame of reference and strategic goal for himself. Into this opening declaration I have thrown some heavy, carefully chosen qualifiers – aspire and develop as broad a frame of reference – because my byword is that a mediator should approach his mission with humility and respect. He should certainly not arrive with a ready-made, shrink-wrapped formula: as a humble Donald Rumsfeld might have said, 'you work with the conflict you have before you rather than one you would prefer to have'.

There will surely be players, external and internal, who will volunteer advice to a mediator who is about to take on his task. A mediator should listen to such advice politely, but he should reserve his judgement until he hears out the parties and all essential stakeholders and players, mainly internal, and only then attempt to draw his own conclusions as to what is feasible and desirable. He should also prepare to be disappointed if this proves elusive or unattainable. In any case, he should keep his ideas to general outlines so as to be open to adjust them as the process unfolds. A strategy of how to get to the desired goal, in terms of marshalling forces and building a network of incentives and disincentives, is as important as the vision itself, if not more so.

When we speak of vision we are, of course, referring to a concept that arises in the eye of someone's mind. The question is, therefore: whose mind, or, more precisely, whose vision?

Probably not the parties'. It is safe to assume that if adversaries have entered into conflict it is because they have, at the very least, clashing conceptions of

> *"A mediator has to go down the perilous path of trying to forge a common vision and persuading the parties to subscribe to it, all the while presenting it as the result of a negotiation between the parties themselves."*

what their relationship should consist of, or a serious grievance which has pitted them against each other on the battlefield. It follows that one party's vision of the outcome of the conflict will almost inevitably diverge from the other's. This is not fertile terrain to plough in search of a common vision. If anything, the purpose of a negotiation between parties to a conflict, and of the intervention of a mediator, is to forge such a common vision where one doesn't exist to start with.

Beware, however, of putting the 'vision question' as an item for negotiation or even discussion, or of entertaining proposals by one party to that effect. I have seen such initiatives being used shamelessly as a device to sabotage the conduct of serious business. A common vision can and should emerge only gradually, and most frequently it will begin to take shape at its own pace and should be allowed to consolidate. In fact, trying to pin it down could have a deleterious effect, if only because it adds one more layer of questions to be negotiated.

A key element in the solution of a conflict should be that it will withstand the test of time, i.e. that it will be durable. There is an ongoing debate about how to ensure that once the guns fall silent, it will not be a mere reprieve during which they are squirreled away in caches only to be dusted off and cocked for the next round of fighting. Rather, durability should be the result of a negotiated solution which addresses perceived as well as underlying issues and provides for channels for the resolution of future disputes that make it unnecessary or unappetizing to resort to arms, thus

allowing for the monopoly of firepower to be placed in trustworthy security bodies. Durability is in fact the central goal of what we have come to call post-conflict peacebuilding: ensuring that conflict will not recur. Surely one factor in averting recurrence of conflict is ownership. It seems to me that the chances of durability can improve significantly if the results emerge, or are at least seem to emerge, from the parties in conflict rather than from the outside. That would argue for mediators who possess the virtue – admittedly rare in this line of work – of self-effacement.

The problem, of course, is that all too often a common vision of how a conflict should be solved begins to emerge only as endgame approaches, by which time the question is moot. In fact, there is a certain category of conflicts where the seemingly academic question of what and who brought it about is precisely one of the battlefields on which it is fought. The former Yugoslavia, Cyprus and the Middle East fall into this category of conflicts; they are examples to which one can apply the alleged Churchillism, 'too much history, too little geography'. In such cases, a mediator has to go down the perilous path of trying to forge such a common vision and persuading the parties to subscribe to it, all the while presenting it to the constituents of the negotiators, as well as to the world at large, as the result of a negotiation between the parties themselves.

What should be the elements of a vision for the durable solution of a conflict? There is no checklist; Ikea does not have on its shelves a ready-to-assemble kit. There are, of course, certain obvious building blocks – third-party monitoring, internal legitimacy, international support, a seal of approval of the international financial institutions, institutional reform, etc. The agreement finalizing the conflict must be as rounded out and complete as humanly possible; loose ends or issues left for subsequent negotiation are potential landmines that threaten peacebuilding. In the final analysis a mediator would be well advised to put together the ingredients of the cocktail based on a clearheaded assessment of what led to the conflict in the first place. Coming back again to the post-conflict peacebuilding rule of thumb of avoiding recurrence: the mediator must insist on providing ways to address in the future, without resorting to violence, disputes which led to war in the past. For example, if the central issue was resources, he must ensure that there will be a way to control or allocate them that will be impartial and friction- and abuse-free. If it was exclusionary policies, he should bring about an inclusionary system, and so forth.

Each of my colleagues in peacemaking will, I am sure, disagree with one, the other or all the points that I have made. My observations are based on a combination of the experiences I have had and the lessons that I have drawn and the fact that I was working on behalf of the Secretary-General of the United Nations. Each mediator has his own style and imprint, of course, but a UN mediator comes equipped with a particular specificity and indeed deontology. Others may not have the same constraints and guidelines, which might burden or strengthen them, as the case may be, in the same way. No doubt a mediator acting on behalf of another intergovernmental organization, superpower, middle or indeed small power, or an NGO, will have a specificity of his own, and even a deontology – or, for all I know, they may have neither. But in any case no two will be alike. Thus a mediator from one such entity might have taken a different approach from the one that I took on Cyprus, though I suspect that he would have made most of the same choices that I did, including the one to press ahead with the referendums in April 2004 while knowing that the UN plan would be rejected by one side. Another mediator might have settled for a quick fix rather than a thorough, durable solution on El Salvador; he might have been more lenient toward the last-minute attempt to cut a deal on blanket amnesty for those responsible of major misdeeds.

The choice of mediator, like the choice of a surgeon when you are faced with the need to extract something malignant festering inside you, can be rather far-reaching in the sense that it might lead to different results – for better or worse. We all are aware of the bane of any mediation, which is the ability of parties to conflict to play one off against the other. As a by-product of this brief discussion of vision and strategy, therefore, two ideas come to mind: first, perhaps a code of conduct between would-be mediators would be in order, under which when a mediation is in progress others remain out of the way. Second, perhaps a catalogue of the supply-side would serve to clear the air and show where each stands: wouldn't it be useful for forum-shopping parties to know what they are bargaining for depending on whether they go for an intergovernmental organization or a government or an NGO?

KEYNOTE ADDRESS

Colombia: a ray of hope

Keynote address by H.E. Mr Juan Manuel Santos, President of the Republic of Colombia

2015

The resistance to diplomatic solutions is nowadays common to most of the major conflicts at the centre of international attention. There are more than 20 active conflicts in the world, and there is just one – *one* – where there is a realistic effort underway to bring it to an end through dialogue: the Colombian conflict.

That's why I am here: to share with you how, in my country, we are attempting to solve the longest armed conflict in the Western Hemisphere. There are many difficult challenges ahead – it's true – but no one can deny that our negotiations with the Revolutionary Armed Forces of Colombia (FARC) offer a ray of hope in a world darkened by war, terrorism and violence. We have learned that a military solution in the case of Colombia, and in many other conflicts, is not the answer.

Involved since the 1960's in an armed conflict with guerrillas, paramilitaries and drug lords who turned the country's rural areas into territories of crime and atrocities, Colombia had the image of a failed and violent State. Fortunately this is no more. But, we are still trapped in a war logic.

> *Sometimes a leader needs to fight terrorism as if there was no peace process, and persist in the search for peace as if there was no terrorism.*

War is not a solution

It is time to recognise that war, as a major deciding mechanism in conflicts, has simply become obsolete. Military 'victory' no longer brings peace, simply because in the asymmetric wars of today victory will always be an elusive affair, and there will always be a war after the war. It would be, on the other hand, dangerously naive to believe that the exercise of power and the capacity to intimidate are unnecessary.

In Colombia we had to change the correlation of military forces in our favour as a condition to start the peace process. If our determination to reduce the military capabilities of the FARC had not been realised and positive results had not been obtained, I can assure you that they would not be present at the negotiating table. And if we still send soldiers to fight, it is because we are in "a battle for peace", as Yitzhak Rabin said in a memorable speech at the signing of Israel's peace with Jordan. He also taught us that sometimes a leader needs to fight terrorism as if there was no peace process, and persist in the search for peace as if there was no terrorism. This has been my way, however contradictory and costly it may seem. And I truly believe that it is the fastest way to reach a settlement. But – I repeat – more war is certainly not the solution, as many believe, and this is particularly true in the Colombian context.

Global and regional support

Another condition for successful conflict resolution in today's interdependent world is the role that global or

regional circumstances can play. This has been patent in our case. A radical change in our foreign policy, which led to an improvement in our relations with our neighbours and the rest of the region, facilitated the beginning of the process. Our neighbours, including Venezuela, Cuba, Chile and lately the United States, are today of great importance for our peace process. Norway has played – I say this with gratitude – a fundamental and positive role. Fortunately today there is not a single country that doesn't support peace in Colombia. We just had unanimous backing from the CELAC[1] – European Union summit held in Brussels. All the countries of Latin America, the Caribbean and Europe, also called – quite rightly – for faster results. This is also my plea because we have advanced too slowly in the last year.

> *"Transitional justice experts usually deal with past abuses after a peace agreement has been reached. In Colombia we are trying to do both at the same time."*

Learning from the past

We prepared well for these negotiations and we have worked in parallel to create the necessary momentum to allow us to end this 50-year conflict. The FARC's record in past peace talks shows their tendency to try to manipulate them to acquire national and international legitimacy without actually striking a deal. We learned from previous experiences in order to prevent future mistakes. Every step we have taken has a logic and a reason.

Addressing the root causes of the conflict

The failure of the Colombian State to guarantee its presence in the whole country was one of the reasons that allowed the emergence of criminal insurgencies. Having that in mind, in Colombia the post-conflict has already begun and we are addressing the root causes of our conflict; one that has been especially cruel and violent. It has left behind almost 250,000 Colombians dead and more than 7 million victims including masses of displaced persons. Resolving such a conflict requires dealing with practically every aspect of our nation's life.

Colombia's lagging infrastructure has been a handicap for economic development and a recipe for poor security. We are addressing all these challenges. For example, we are implementing the most ambitious infrastructure development and housing projects ever imagined. And we are also designing and implementing modernisation policies in agriculture, energy and technology. All of these major competitive improvements for the country are being complemented with aggressive social reforms. In the last five years, we have created more jobs and pulled out of poverty and extreme poverty more people than any other country in the region. We made education free and for the first time our budget for education is bigger than our military expenditure. Our health system now has universal coverage and is one of the most progressive in the world. As I have said: 'in Havana we are silencing the weapons; in Colombia we are building peace'.

Victims

But not only that… We decided to put the victims at the centre of the solution of this conflict. This is the first time this has been done. I signed in the presence of UN Secretary-General Ban Ki-moon the *Victims and Land Restitution Law*, which contemplates reparation for the victims and restitution of millions of hectares of land, stolen from the peasants through the use of force by guerrillas, paramilitaries and drug lords. This historic law has been the backbone of the agreement already reached with the FARC on Integrated Agrarian Development Policy.

Bear in mind that normally these kinds of laws are implemented only after a conflict has ended. In this case, the law is being put into practice at an enormous fiscal cost while the war – unfortunately – is still going on.

1. Community of Latin American and Caribbean States.

For my government, giving back land to dispossessed peasants and offering financial reparation to the victims and to the millions of displaced families became another way to win peace and a way to start healing 50 years of wounds. We have already indemnified five hundred thousand victims. I have been told this is unprecedented in the world.

The path we took

We started secret negotiations almost three and a half years ago to establish a limited agenda that would allow us – assuming we reach an agreement – to end the conflict. It is the first time that the FARC have agreed to such a procedure. The Framework Agreement – signed here in Oslo two and a half years ago – has five items on the agenda:

1) Integrated Agrarian Development Policy;
2) Political Participation;
3) The Problem of Illicit Drugs;
4) Victims and Transitional Justice, and
5) The End of the Conflict (DDR).

We have already reached agreement on the first three. Never before have we advanced so far in a negotiation with the FARC. In many ways, it constitutes a historic landmark. For example, just to have an agreement on the third item – illicit drugs – is of great importance not only for Colombia but for the world, and has generated tremendous interest and support for the process. Why? Because Colombia has been a centre of drug production and trafficking worldwide. We have been the main exporter of cocaine to the world for the last 30 years. The coca plantations have destroyed thousands and thousands of hectares of our rainforests with devastating consequences for the environment and climate change.

> *"Exercising leadership in times of war is much easier than exercising leadership in a peace process."*

Countries such as Mexico and the nations of Central America, where drug cartels are violently harassing the population, will benefit from peace in Colombia. It would also positively affect the United States and all other drug consuming countries, as well as West Africa, which has become in recent years the transit point of South American drugs on their way to Europe. The FARC have played a very important part in this chapter. Many have accused them of being the number one drug cartel in the world. That's why getting them to break all links to drug trafficking and instead help the government in the substitution of illegal crops and in the destruction of the labs (located deep in the jungles where cocaine is manufactured) would have such an impact. The illicit drug market has paid for their war machinery and they have produced and encouraged this lucrative source of financing. It is critical therefore that we eliminate this hellish business. So addressing the issue within the peace talks was fundamental.

Justice

We are now simultaneously addressing the two last items of the Agenda: the rights of victims and disarmament, demobilisation and reintegration (DDR). A truth commission was agreed upon two weeks ago and we are starting to talk about the key issue of justice. Here we are entering unexplored terrain: there are no examples of successful peace negotiations in the era of the Rome Statute. We are aware that we are setting a precedent.

Transitional justice experts usually deal with past abuses after a peace agreement has been reached. In Colombia we are trying to do both at the same time. This is truly a case of squaring the circle. We want to honour our international obligations, including our obligations under the Rome Statute, and obviously our national legal obligations as well. And more importantly, we want to make sure that whatever legal formula we arrive at, it is one that is perceived by all Colombians as a just formula. That is the basis of a long and lasting peace.

At the same time, arriving at such a formula requires the agreement of both parties at the negotiating table. It is extremely difficult and challenging but we are convinced that the circle can be squared. How? By putting victims' rights – as I mentioned before – at the centre of the negotiation. That is what we have just agreed with the FARC in Havana: to build a comprehensive justice system that will address victims' rights with regard to truth, justice, and reparations, and this will allow us to achieve peace as well.

> *Too frequently, peace processes are defeated by politics, not necessarily by the core issues at the negotiating table.*

Trade-offs between peace and full accountability are unavoidable. Still, our aim will always be to achieve the maximum degree of justice that will allow us to attain peace. And to build a system that delivers the greatest accountability possible in a transition to peace. That system will necessarily be a comprehensive justice system that incorporates both judicial and extra-judicial mechanisms designed to satisfy victims' rights, where there can be special criminal treatment for those who are willing to redress victims by telling the truth and participating in reparation programs. Will we succeed? We don't know. But if we do, we may well become a new model of how to carry out justice in a peace negotiation. Above all, nothing can be done or agreed, particularly when it comes to justice issues, without the democratic consent of the Colombian people.

Sharing our experience

Now let me finally share with you some personal experiences. I was duly warned that I would incur a high political cost (as I have); that exercising leadership in times of war, as I did when I was Minister of Defence before becoming President (I was the most popular minister and that is why I became President) is much easier than exercising leadership in a peace process. War 'makes rattling good history, but peace is poor reading'. War in Colombia and elsewhere, you surely know, frequently unites nations, while peace divides them. Abraham Lincoln, who knew this from his own extraordinary life, warned politicians 'to avoid measures of popularity if they want to have peace'.

I have certainly learned the lesson. Too frequently, peace processes are defeated by politics, not necessarily by the core issues at the negotiating table. This is exactly what is happening in Colombia. It is hard to believe but peace also has many enemies, many times powerful enemies. And allow me to draw yet another lesson from my own experience.

Conflict tends to inflame and distort the ego and we must rise above the natural urge towards animosity. A leader needs to focus on the political objective of peace, and prevent being drafted into the easiness of war by the changes in the tide of opinion. That is why I always remind myself that this was my mandate when re-elected. It has become my mantra.

Formidable difficulties still lie ahead for us in Colombia, and a final agreement is by no means a given. Time, unfortunately, is also running out. But I am confident that we still have a real chance to put this conflict where it belongs: in the history books. Reshaping the reality around us is our duty to future generations. And we should be humbly grateful for the opportunity given to us by our people to serve them to the best of our capacity. I will persevere in my vision for Colombia: a country at peace, better educated and with more equality. If we reach an agreement, if we stop killing each other after half a century of war, the political cost so far incurred will become a profitable investment. If not, I will in any case go to my grave with peace of mind for having tried what I believe to be 'the correct thing to do'.

UN crisis diplomacy and peacekeeping: an emergency health check

Richard Gowan

2014

The UN: in need of a check-up?

The United Nations is currently in poor health but the severity of its condition is not yet clear. Over the last six months, the organisation has repeatedly shown signs of operational feebleness and political paralysis. Symptoms have ranged from the failure of the UN mission in South Sudan to foresee the country's implosion last December to the prolonged agony (and predictable futility) of bringing the Syrian government and opposition together in Geneva in January. The organisation's initial response to the Ukrainian crisis was equally messy, as the Secretary-General's envoy Robert Serry was expelled from Crimea by pro-Russian forces and the Security Council was unable to react because of Moscow's veto. From Darfur and Somalia to the Central African Republic (CAR) and Mali, UN peace operations and political missions have had to contend with poor resources, personnel and security.

But while these symptoms are worrying, their significance is uncertain. Are these merely the spasms and chills that inevitably affect any organisation involved in crisis management? Or could they be evidence of a chronic disability with the potential to cripple the organisation's long-term contribution to peace and security?

> *The UN's operational system and political paradigm for crisis management are surely in crisis – and vulnerable to further failures in the near future.*

There are reasons for optimism. UN missions and officials have demonstrated resilience in the face of recent setbacks. Although caught off-guard in South Sudan, the peacekeepers there sheltered over 80,000 civilians in their camps despite incurring fatalities. The multilateral effort to dismantle the Syrian chemical arsenal has made remarkable progress. The battered UN operation in the Democratic Republic of Congo (DRC) has regained leverage by employing force against militias in the east of the country. Even the Cypriot peace process has stuttered back to life.

The UN's current woes do not approximate to the series of cataclysmic failures – Somalia, Rwanda and Srebrenica – that overwhelmed the organisation in the early and mid-1990s. And although tensions among the five Permanent Members (P5) of the Security Council have escalated over Syria and Ukraine, other organs of the UN system appear to be functioning better than expected. The Human Rights Council, typically bogged down in East–West and North–South disputes until a few years ago, has passed a series of strong and detailed resolutions addressing Syria. The High Commissioner for Human Rights, Navi Pillay, and her team have taken a concomitantly larger role in recent crises. Secretary- General Ban Ki-moon, often accused of paying insufficient attention to crisis management early in his tenure, has spoken out forcefully on conflicts like that in CAR that could otherwise be forgotten.

Yet, while the UN's successes may balance its failures on paper, something remains profoundly amiss. Faced with a mass of crises and conflicts, it is hard to discern underlying political or strategic patterns. A diagnostic framework is required to assess the UN's health and sift decisive developments from more transient factors. In 2008, in an article on peacekeeping in the mid-2000s, this author laid out one possible framework for distinguishing between "immediate, systemic and paradigmatic" crises facing the UN.[1] This paper returns to this tripartite scheme, and argues that the UN's operational system and political paradigm for crisis management are surely in crisis – and vulnerable to further failures in the near future.

The paper then goes on to argue that UN mediators cannot cure the organisation's deep flaws but do have a range of options to mitigate its weaknesses. These options include: (i) using diplomatic means to rescue blue helmet operations that lack the military means to fulfil their mandates; (ii) acting as a buffer between Russia (and possibly China) and the West in a context of increasing international tension; (iii) undertaking "niche diplomacy" and de-escalatory activities in cases where the big powers wish to avoid clashes; and (iv) building relations with increasingly ambitious regional powers and regional organisations that may be able to drive peacemaking efforts even at times when the P5 are divided, distracted or powerless.

Diagnosing the UN's ills

This paper's diagnostic framework is straightforward. Immediate crises are simply the surprises and dilemmas that faces the organisation on a daily basis, many of which fade away without any lasting impact. Systemic crises, by contrast, are those cases that (individually or coming together) reveal basic shortfalls in the UN's capacity to deliver on crisis diplomacy and conflict management. In 2008, the Darfur conflict and the UN's struggle to deploy a peacekeeping force in tandem with the African Union (AU) looked like such a crisis. Difficulties in recruiting capable forces, locating assets such as helicopters and negotiating host-state consent revealed problems that had already done damage to other blue helmet operations.

This paper reviews both the present state of the peacekeeping system and the health of the UN's mechanisms for managing preventive diplomacy, good offices and political missions. It also addresses paradigmatic crises: situations that challenge the political foundations of UN crisis-management efforts. There is no single 'UN paradigm' for handling conflicts, but some core principles are clearly relevant. These include: an acceptance of the UN's role in a given crisis among the P5 and (at least for show) other Member States; some level of consent for UN engagement among the parties to the crisis in most cases; and respect for international humanitarian law and other liberal norms. In recent years, the organisation has also prioritised collaborating closely with regional organisations.

> *"UN mediators cannot cure the organisation's deep flaws but do have a range of options to mitigate its weaknesses."*

A paradigmatic crisis can emerge, therefore, in cases where the UN engages in a conflict despite insurmountable political differences among the P5, or in the teeth of opposition from a regional organisation or – often decisively – the parties to a conflict. The UN has, of course, been involved in crises under these circumstances since its inception. Cold War fissures among the P5 did not stop the UN from acting in Korea, Suez and Congo in the 1950s and 1960s. But the organisation's ability to absorb such tensions may be finite, as the UN's damaging loss of momentum from the mid-1960s to the late 1980s demonstrated. Since the end of the Cold War, the UN paradigm for conflict management has been tested by breakdowns over cases including Kosovo and Iraq but these have not crippled the organisation completely.

It is important to analyse whether the international splits over Syria, Ukraine and other current crises could do deeper and more lasting damage to the UN's future. But

1. Gowan, Richard. "The Strategic Context: Peacekeeping in Crisis, 2006–08". *International Peacekeeping*, Vol. 15, No. 4 (2008).

> *The UN has always been a 'selective security' institution, inconsistently utilised by major powers to resolve some crises and ignored during others.*

first it is necessary to address the basic systemic factors hampering UN actions. Even if the overall international political climate was more favourable, the organisation would still have to make do with a faulty batch of crisis-response tools.

Systemic stresses

A 360-degree review of the UN's crisis management capabilities would include the conflict-related activities of entities from humanitarian agencies to the UN Development Programme (UNDP). An overview of this type would reveal many reasons for concern. The relief effort for Syria has stumbled badly at times for technical as well as political reasons. UNDP's Bureau for Conflict Prevention and Recovery has shrunk significantly as donors have cut funds in the name of austerity.

This paper confines itself to a narrower look at the UN's diplomatic and security tools and its departments of peacekeeping operations and political affairs (DPKO and DPA). At first glance, these look systemically sound. Despite repeated warnings of overstretch, blue helmet operations have expanded to record levels. By the end of 2013, there were over 97,000 soldiers and police officers under UN command, plus 22,000 AU troops in Somalia reliant on UN logistical support. The organisation has fielded a growing range of political missions, putting a growing number of civilians on the front lines in trouble-spots such as Libya. In many ways, the UN has weathered the global financial crunch better than institutional "competitors" such as NATO and the European Union, which have curtailed their expeditionary operations.

Yet it is possible that the UN's current level of activity masks fundamental weaknesses. We have noted that the Darfur mission appeared ripe for failure in 2008, with potentially serious ramifications for peacekeeping as a whole. The UN–AU operation (UNAMID) there has indeed struggled badly, although its travails have often been minimised by UN officials or glossed over by members of the Security Council. A recent *Foreign Policy* investigation of the mission concluded that it had been "bullied by government security forces and rebels, stymied by American and Western neglect, and left without the weapons necessary to fight in a region where more peacekeepers have been killed than in any other U.N. mission in the world".[2]

Peacekeeping officials often play down Darfur as an exceptional case – and a mission that simply should not have been deployed – rather than evidence of a systemic malaise. Yet there have been signs that other UN missions lack the military assets, clear doctrines or firmness of purpose needed to handle major threats. The force in Côte d'Ivoire came close to collapse during the post-electoral crisis of 2010–2011, with many units unable to patrol or unwilling to follow orders. The arrival of extra attack helicopters and a French intervention saved the day. In 2012, rebels seized the city of Goma in the DRC under the nose of one of the best-equipped UN forces in Africa, raising doubts about many of the peacekeepers' loyalty to their mandate.

If these shocks suggested that the peacekeeping system was more fragile than it first seemed, events over the last twelve months have reinforced this concern. In the first half of 2013, the Security Council turned to the UN to take over the African-led operation working alongside the French in Mali. The UN has struggled to get fresh soldiers on the ground, guarantee the quality and discipline of some African contingents and adapt to terrorist attacks. As the International Crisis Group (ICG) noted, the peacekeepers seem to have "a greater presence in [the largely stable capital] Bamako than the rest of the country".[3] An international official notes that some UN troops seem to feel that "pillage after a fight is normal and to be expected".

2. Lynch, Colum. "They Just Stood Watching". *Foreign Policy* (7 April 2014).
3. International Crisis Group. "Mali: Reform or Relapse". *Africa Report 210* (10 January 2014).

The crisis in South Sudan has arguably caused even greater trauma. The post-independence peacekeeping mission there was launched in 2011 as a lightweight, mobile and politically smart outfit, unlike its counterpart to the north in Darfur. It never achieved these ambitions. In early 2013, an independent study found that the mission was hampered by a lack of air assets (also a problem in Mali) and unsystematic information gathering.[4] These problems came back to haunt the UN mission (UNMISS) as South Sudan imploded in December. The ICG has accused UNMISS of being "neither politically nor operationally prepared for the conflict".[5]

Many peacekeepers in Mali and South Sudan have nonetheless behaved bravely. In the DRC, the Security Council's decision to launch a "Force Intervention Brigade" made up of well-armed African troops restored some stability after the Goma crisis. But it is hard to deny that the events of the last year bear the hallmarks of a systemic crisis in peacekeeping. Patterns of failure recur with unnerving frequency, involving insufficient military resources, inadequate political analysis, unreliable personnel and poor strategic direction. DPKO officials recognise these deficiencies and have tried to mitigate them by deploying advanced technologies such as drones and reviewing the quality of their forces more rigorously. It remains unclear whether the UN can find the resources and personnel to rebuild peacekeeping's credibility.

Resource problems also dog the UN's political missions and diplomatic efforts, which absorb fewer funds and (with occasional exceptions such as Syria) less political attention. Under Ban Ki-moon, DPA has been enlarged and given expanded responsibilities in cases including CAR and Somalia. Ban has repeatedly pressed the General Assembly to establish a new system for funding and overseeing political missions, but to no avail. In the meantime, political missions have suffered severe blows. In March 2013, UN political staff had to be evacuated from CAR as rebels seized the capital, Bangui, in a process that even senior UN officials call a humiliation. After the Security Council mandated an expansion of the UN presence in CAR in late 2013 it proved difficult to find sufficient numbers of personnel to fill the new posts at all, let alone to deploy them fast enough to monitor the worsening war. The new assistance mission in Somalia was undermined by a terrorist attack in Mogadishu that claimed fifteen lives. The long-running political presence in Afghanistan, adapting to the drawdown of Western troops, has also been targeted.

Just as DPKO has searched for answers to the systemic crisis in peacekeeping, DPA has looked hard for ways to manage the risks to political missions. It has deployed guard units to Bangui and Mogadishu that may protect civilian staff from future threats. But DPA's ability to handle fresh conflicts is still too limited. The department and wider UN system have deep expertise on certain regions and cases, such as the Palestinian Territories, but stumble when tensions escalate in less familiar settings such as Egypt and Ukraine. This lack of breadth was highlighted when Ban Ki-moon had to redeploy Robert Serry, the Special Coordinator for the Middle East (and by chance a former Dutch ambassador to Ukraine) to Kiev and Crimea earlier this year.

> *"Leaders from Syria's Bashar al-Assad to South Sudan's Salva Kiir have proved adept at constraining and controlling the UN presences on their territory through a mix of terror and sharp political tactics."*

The UN has always had to dig deep to find experts on unforeseen crises. If frictions between the West, Russia and China exacerbate tensions in Europe and the Asia-Pacific, the organisation may have to stretch to find the specialists and envoys to handle these clashes while also keeping up with events in Africa and the Middle East. The challenges involved in managing these tasks in parallel may place less obvious systemic strains on the UN than propping up its larger peace operations, but they will still be taxing. The UN's ability to navigate these problems will also be shaped by deeper political challenges to its current paradigm of crisis management.

4. Hemmer, Jort. "We Are Laying the Groundwork for our own Failure". *CRU Policy Brief 25*, Clingendael Institute (31 January 2013).
5. International Crisis Group. "South Sudan: A Civil War by Any Other Name". *Africa Report 217* (10 April 2014).

Paradigmatic pains

How bad is the UN's political situation? For many observers, the Security Council's breakdowns between Russia, China and the West over Syria and Ukraine have defined UN diplomacy since 2011. Officials and diplomats in New York are marginally more sanguine. Moscow and Beijing may engage in trench warfare with the West but they have not opted for all-out confrontation. The two sides have largely kept diplomacy over Africa and the Middle East separate (although the Russians have thrown up more obstacles over Côte d'Ivoire, the Sudans and even CAR than is generally acknowledged). China has sporadically acted to moderate Russia's most anti-Western positions, and disapproved of its behaviour in Crimea. Moscow has chosen to protect its contacts with Washington – most obviously during the Syrian chemical weapons crisis – rather than return to full Cold War conditions.

> *The more divided the Council becomes, the more mid-level powers will challenge the UN and pursue alternative, fragmentary approaches to future conflicts.*

On this logic, the UN has faced paradigmatic crises in Syria and Ukraine but these have not escalated so far as to compromise the organisation's overall credibility. The UN has, after all, always been a 'selective security' institution, inconsistently utilised by major powers to resolve some crises and ignored during others.[6] Even if the P5 cannot agree on how to deal with Eurasian or Middle Eastern issues through the Security Council, they can still use it to contain second-order problems in Africa. This underplays the dangers to the UN's broader crisis-management paradigm. The Security Council's splits over Syria have corroded the reputation of the body's conflict-management tools. Although far smaller than the operations in Mali and South Sudan, the 2012 UN Supervision Mission in Syria (UNSMIS) raised public awareness of the fragilities of peacekeeping. Robert Mood, the general who led the mission, has blamed the US, UK and France for turning to the UN without proposing a real bargain with Damascus: 'I observed up close how Western politics is about national interests, international rivalry, and the constituency at home rather than about the moral responsibility to ... protect innocent civilians in harm's way'.[7]

Similar doubts about the P5's commitments are widespread. Pascale Baeriswyl, a former member of the Swiss mission in New York, argues that the UN's main powers lack "sufficient energy and motivation to realise a long-term foreign policy vision. Thus, today the Security Council symbolises the eroding power of the multilateral governance system to shape events".[8] This sense of drift has emboldened those who would like to defy or circumvent the organisation. Leaders from Syria's Bashar al-Assad to South Sudan's Salva Kiir have proved adept at constraining and controlling the UN presences on their territory through a mix of terror and sharp political tactics. Having seen UNMISS stick to its guns in December, Kiir accused Ban Ki-moon of colonialism, presaging a campaign of harassment against the peacekeeping force.

This is nothing new (neither Assad nor Kiir has yet outmanoeuvred the UN for as long as Slobodan Milosevic managed in the 1990s) but it inevitably exacerbates the systemic strains on peacekeepers, political missions and envoys outlined above. In the absence of strong leadership from the Security Council, more spoilers are likely to exploit the UN's vulnerabilities. Meantime – as Chester Crocker, Fen Osler Hampson and Pamela Aall have observed – regional organisations, ad hoc coalitions and ambitious regional powers are also taking advantage of the UN's weaknesses.[9]

Saudi Arabia has thus used the Arab League to marshal opposition to President Assad during the Syrian crisis, while also stirring up the UN General Assembly to

6. Roberts, Adam and Dominik Zaum. "Selective Security: War and the United Nations Security Council since 1945". *Adelphi Paper 395* (2013).
7. Mood, Robert. "My Experiences as the Head of the UN Mission in Syria", Carnegie Endowment for International Peace (21 January 2014)
8. Baeriswyl, Pascale. "Backdoor Revolution". *German Review on the United Nations*, Vol. 61, No. 5 (2013).
9. Crocker, Chester A., Fen Osler Hampson and Pamela Aall. "A Global Security Vacuum Half-filled: Regional Organizations, Hybrid Groups and Security Management". *International Peacekeeping*, Vol. 21, No. 1 (2014).

> *In some cases, the P5 will continue to opt to avoid confrontation, creating niches for peacemaking.*

demand action against Damascus. In doing so, it undermined UN–Arab League envoy Lakhdar Brahimi's efforts to resolve the crisis on behalf of both the UN and the League. In South Sudan, meanwhile, the UN's efforts to save lives have been eclipsed by Uganda's decision to send troops to fight for Salva Kiir despite the Security Council's explicit condemnation of "external" interventions in the fighting.

Risk-taking players such as Saudi Arabia and Uganda are the main beneficiaries of the P5's lack of common purpose. The more divided the Council becomes, the more mid-level powers will challenge the UN and pursue alternative, fragmentary approaches to future conflicts. Once again, UN officials are familiar with this threat and have made efforts to co-opt potential competitors. The Force Intervention Brigade in the DRC was, for example, originally an AU-backed initiative championed by South Africa and Tanzania that DPKO officials revised and adapted after the Goma crisis. But even the most ingenious UN strategies are likely only to delay the dilution of the organisation's influence. The P5's clashes over Syria and Ukraine are contributing to a far broader corrosion of the UN paradigm for conflict management.

Mediators: medicating an unhealthy UN?

This paper has offered a brief check-up on the symptoms afflicting the UN, and the overall diagnosis is not good. Rather than simply suffering from painful but passing crises, both the UN's peacekeeping and diplomatic tools appear to be prey to persistent systemic weaknesses. The tensions between the organisation's biggest members mean that a complete cure is highly unlikely: political divisions are liable to upset most efforts to remedy its operational difficulties. But although incurable, the UN's condition is not yet fatal. Unless there is a catastrophic further rift within the P5, the organisation will probably continue to limp on for the foreseeable future.

The organisation's envoys and mediators have an important role to play in keeping it on its feet. The political and systemic challenges to the UN's activities actually increase the importance of small-scale, targeted initiatives by individual officials to mitigate crises. A series of mediators has, for example, had to compensate for the systemic flaws of peacekeeping in the DRC. In 2008, Olusegun Obasanjo was sent to find a regional solution to fighting in the east of the country. In 2013, Ban Ki-moon's chief of staff, Susana Malcorra shuttled to and from the Great Lakes to forge another regional political agreement after the fall of Goma, paving the way for the Force Intervention Brigade. Mary Robinson is now the official UN envoy to the region. The more blue helmet operations stumble due to gaps in their personnel and equipment, the more such mediation will be necessary to contain the damage.

Non-UN mediators have also stepped in to manage such situations: the AU has taken a diplomatic lead in Darfur, while East African states convened peace talks on South Sudan in Ethiopia. Such interventions may often be the best or only chances of peace, but they almost inevitably underscore UN operations' systemic weaknesses. With a reduced diplomatic role, UNMISS has lost its residual leverage in Juba. It is essential that the UN retains the capacity to mediate in similar crises in the future, both to support its personnel under fire and to ensure that peace operations pursue credible political strategies rather than simply concentrate on basic security issues.

UN mediators also need to absorb and reduce the diplomatic fallout of P5 divisions. In the Syrian case, Lakhdar Brahimi tackled this head on, coordinating closely with Washington and Moscow for over a year, and facilitating January's Geneva talks. This has risked compromising his autonomy and alienated regional players such as the Saudis. But keeping US–Russian channels open may also have played a necessary role in limiting the deleterious effects of the Syrian crisis on broader big-power diplomacy (not least concerning Iran), at least before the Ukraine crisis hit.

Not all current crises demand that UN officials play such a self-sacrificing role. In some cases, the P5 will continue to opt to avoid confrontation, creating niches

for peacemaking. In 2011, for example, Russia and the West agreed to take a low-key approach to the Yemeni crisis in the Security Council, offering political space to a UN mediator, Jamal Benomar, to help head off all-out war. In other cases, the UN can play its traditional Cold War role as a mechanism for de-escalating inter-P5 crises. The organisation's support mission in Libya (UNSMIL) was able to handle the immediate aftermath of the fall of Gaddafi in 2011 and assist in elections the following year despite enduring divisions within the Security Council over NATO's military actions.

Niche diplomacy and de-escalatory activities have limits. Even where the UN enjoys initial successes, as in Libya, it may struggle to gather the resources and political will to address evolving threats. Yemen remains fragile and Libya is in chaos. In other crises, even initial success is impossible. The dispatch of Robert Serry and senior UN officials to Kiev and Moscow during the Ukraine crisis failed to sway Russia. Big-power interests predictably impose tight constraints elsewhere. China has taken steps to limit the UN's role in handling rising ethnic conflicts in northern Myanmar.

Examples such as these revive memories of the UN's quiet diplomacy during the later Cold War. The organisation cannot just retreat into that era, however. It faces intense pressure to speak out on humanitarian crises and Secretary-General Ban, stung by criticisms of his underwhelming response to the 2009 Sri Lanka crisis, has taken this to heart. His advocacy for intervention in CAR has, arguably, justified this approach but his equally outspoken approach to Syria has delivered painfully little.

Perhaps even more significantly, UN mediators cannot look only to the P5 but must also address the proliferation of regional actors who are taking a greater role in crisis management. As noted, the UN has placed growing emphasis on its partnerships with regional organisations, although this has proved difficult in situations from Darfur to Syria. Envoys used to the UN paradigm of peacemaking often find their new partners crude, inefficient or biased. But, with the P5 in a state of dysfunction, these imperfect allies can be crucial to allowing the UN to act at all.

Where the P5 is stuck, a regional push for action can give UN mediators enough energy to act. For all its faults, Saudi Arabia created the impetus for the initial UN–Arab League mediation in Syria led by Kofi Annan in 2012 after the Security Council stalled, orchestrating a General Assembly call for an envoy. In CAR, the very weak sub-regional organisation (ECCAS) and the AU have paved the way for a UN intervention, just as West African states lobbied for peacekeepers in Mali. These processes have been bumpy. However, in the future, smart UN officials may often plot with their regional counterparts to cajole or coerce the Security Council into engaging in conflicts that the P5 would otherwise ignore. With the UN paradigm for conflict management ailing, even its most dedicated employees have to look for alternatives.

"Where the P5 is stuck, a regional push for action can give UN mediators enough energy to act."

This may sound pessimistic but this check-up on the UN suggests that pessimism is in order. Rather than try to restore the organisation to full health (something it has arguably never enjoyed), those who care for it need to find ways to alleviate its pain.

The UN's political role in a transitional international moment

Bruce D. Jones

2007

Secretary-General Ban Ki-Moon has taken office at a time of significant turbulence in international politics. As the Secretary-General and his new 'cabinet' begin to take stock of the UN's agenda and relevant capacities, they face several sets of challenges. Some of these emerge from the terrain character of conflict; some from the transitional international political environment; others from a growing band of competitors; and some from the UN itself.

This brief note traces some of these challenges through the lens of their potential impact on the space available to the UN to play a political role in conflict and crisis management; and sets out some elements of possible strategy to navigate the likely turbulence ahead.

Evolving challenges

A shifting terrain of conflict

Although there is obvious danger in commenting on trends early on in their formation, the years since 9/11 do seem to exhibit a number of changing features of conflict:

A continuing decline in internal wars. The overall decline in the level of internal war world-wide since the mid 1990s has been well documented, most emphatically by the *2005 Human Security Report*, and the recent 2007 update to that report shows a continuing decline, notably in sub-Saharan Africa.[1]

The Report notes however that this decline in wars has occurred in large parts through the fact of wars ending through mediation, a good thing surely, but historically a less stable way to end wars than victory by one party. Mediated settlements to internal wars thus bring with them a significant risk of relapse and therefore the challenge of preventing recurrence of conflict. This is an issue that will have to be grappled with, primarily through the lens of integrated missions and the broader political and peacebuilding strategies that must accompany them (and that so far appear to be eluding the newly activated Peacebuilding Commission).

> *"Mediated settlements to internal wars bring with them a significant risk of relapse and therefore the challenge of preventing recurrence of conflict."*

A rise in interstate conflict, including conflict involving major powers. The *Human Security Report Update* notes that outside of sub-Saharan Africa, all other regions have seen a slight up-tick in the number of overall conflicts between 2002 and 2005. Unlike in the

1. Human Security Centre. *Human Security Report 2005: War and Peace in the 21st Century*. New York, Oxford: Oxford University Press (2005); and Human Security Report Project. *Human Security Brief 2007*. Simon Fraser University, Canada (2007).

1990s, several of these have involved major powers. The six years since 9/11 have seen the US engage in war (for self-defence) in Afghanistan and (for more confused reasons) in Iraq; lead efforts to impose sanctions and other Security Council-based measures on Syria and Iran; and engage in a high-stakes diplomatic effort to manage nuclear outbreak in North Korea. The years since 2000 have also seen cross-border war between Ethiopia and Eritrea; Israel and Lebanon; and near misses between India and Pakistan, and Nigeria and Cameroon, to name just two. Also simmering are several separatist or potentially separatist conflicts that impact on regional or rising powers' interests: in Kosovo (the EU, Russia), Moldova (Russia), Aceh (Indonesia, Australia), and Sri Lanka (India).

A rise in sub-regional conflict formations. In several regions – notably West Africa, the Horn and Central Africa, and the Middle East – 'internal' armed conflicts have taken on an increasingly cross-border character, including aggressive interference (at the least) from neighbours and the rise of cross-border networks of licit and illicit economic actors (especially transnational organized criminal networks.)

Conflicts involving terrorist organizations. In a significant subset of conflict cases traditionally approached by the UN through a civil war framework, parties to the conflict have been designated as 'terrorist organizations' by significant states (and not just the United States), confronting the UN with a major political and operational challenge – e.g. in Palestine, Colombia, Lebanon, Sri Lanka, Syria, etc.

This is an uncomfortable issue for the UN. On the one hand, many senior UN officials hesitate about the fact that strong US opposition to any party engaging with such groups poses a significant obstacle to UN engagement with them. On the other hand, the US, quite apart from being the superpower, is a Permanent Member with substantial ability to shape UN policy on peace and security questions, and is often supported in its stance (tacitly or publicly) by other powerful actors – other Permanent Members (P5), significant Arab states, etc. Many believe that the Secretary-General (SG) or at least his Envoys should be able to talk to any actor regardless of P5 views, and note that in past conflicts the UN has often played its most important role precisely by being able to talk to actors that more powerful entities could not. On the other hand, it is also fair to say that the UN has with equal frequency tread carefully about engaging political groupings that are not recognized by concerned powers as being legitimate interlocutors.

> *"Parties to the conflict have often been designated as 'terrorist organizations' by significant states, confronting the UN with a major political and operational challenge."*

On this issue, the absence of a definition of terrorism at the UN poses a continuing obstacle. Because there is no agreed UN definition as to what constitutes a terrorist organization, there can be no agreed UN list or similar; thus, any given group may be on the American, or European, or Chinese 'list' of terrorist organizations, but where those designations are contested, as they frequently are, accepting that designation creates the risk of appearing to be following one powers' approach to a conflict, rather than an impartial one. The issue is certainly confused, as well as contested: why are the Janjaweed, who deliberately attack civilians for political and strategic purposes, not designated as terrorists, while the Tamil Tigers are?

Here, the issue depends very greatly on the question of whether or not it is the Secretary-General's independent good offices that is the critical UN political role; or whether that central political role is vested rather in the Security Council (and thus primarily the P5), which maintains responsibility for international peace and security. Where the UN Security Council (UNSC) has determined that a given group or state should be dealt with through a specific political framework (as it did by imposing sanctions on Taleban-led Afghanistan before 9/11, and as it is doing through its approach to Iran and to Syria) the Secretary-General has minimal power or authority to demur. On the other hand, the Secretary-General does have a responsibility to consider the impact of UNSC positions on the UN's ever-larger field presence, which has at times been complicated by Council stances.

* * *

> *The UN has often played its most important role by being able to talk to actors that more powerful entities could not.*

In short, a highly complex conflict terrain, much more complex than the terrain of humanitarian crises, primarily in Africa, through which the UN developed its political and operational role in the 1990s; and one further complicated by broader international tensions.

The international political context

Quite apart from the UN, the international political arena is undergoing significant turbulence. Some of this turbulence may make life easier for the UN in the short-term, but more often, it will be complicating.

International tensions are rising. What could be labelled 'strategic polarization' among major international players is manifest in various ways, including in international institutions, especially the UN.

Much of this relates to the United States. Poll after poll tells us that the standing of the United States in the world is at a historic low and that tensions between specific countries/regions and the US (sometimes broadened to the West as a whole) are high.

Such tensions are evident in great power relations. Perhaps this is most notable in the increase in rhetoric from Russian President Putin that is sharply critical, even condemnatory, of US policies. Even more important is the nature of US-China tensions – these were strikingly high at the UN in 2006, but to some extent this was personalized against US Ambassador Bolton. Significant problems remain on the agenda, but it is also the case that, albeit with ups and downs, China worked closely with the US to contain the North Korea crisis, and that there has been a narrowing of differences (very late) on Darfur.

International tensions are of course very much evident in the Arab world, especially around the questions of the US presence in Iraq and of US policy on Palestine (and more recently, on the Israel-Hezbollah conflict). There are important complexities here, however. Perhaps most important is that growing anti-US rhetoric among Arab leaders masks important shifts by those same leaders towards efforts to renew their alliance with the US (and therefore peace moves towards Israel) in order to bolster their common defence against Iran. The growing gulf between those governments' unofficial policy and their populations' perception of international politics is a minefield, not just for the UN.

US bogged down in Iraq. It is too early to judge conclusively whether the "surge" strategy combined with a more engaged stance by US Secretary of State Rice will pay off in terms of either an improving security/political situation in Iraq or improving sub-regional and regional dynamics. What is not too early to judge is that between now and the US elections, the issue of Iraq will overwhelmingly dominate the US political and policy process. Only the outbreak of a major crisis in Iran has the potential to re-orient that focus. This has costs and benefits for the UN's political role: it makes the US less able and less tempted to take on new large-scale endeavours on their own, and is driving a more diplomatic, P5-oriented strategy in the State Department. On the other hand, it means that where US leadership is irreplaceable, it will be absent, or partial, or delayed.

US election season is upon us. Further, although there are 18 months left in the term of President Bush, the US election season is in full swing. While not quite yet a lame duck, President Bush's ability to shape foreign policy will be more and more constrained in the coming months, as Republican members of the House and Senate increasingly seek to distance themselves from Bush's Iraq policy. Many international actors are already looking ahead to the question of foreign policy under a new President, Democratic or Republican, and will hold fire on significant issues (for good or ill) until such time as a new US leader is in place. By the same token, states or actors seeking space to manoeuvre in regional or international conflicts may seek to use the remaining period of a weakened Presidency to gain advantage.

The leadership, or policy, of major actors is in flux. France has and the UK will shortly officially have a new leader in office. The potential impact of this is significant, given how closely both Blair and Chirac (less so of late) worked with SG Annan in his political capacity. Moreover, a shift towards a more Atlanticist stance in

the Elysée Palace (probably) and away from a too-close US alliance stance in 10 Downing Street (perhaps) will signal a shift in the P-3 alliances and arrangements that have been a major factor in shaping UNSC dynamics and thus SG political space in the past 10 years. Less specific but no less important are changing foreign policies in both Delhi and Beijing, in the former case exemplified by the US-India nuclear deal, in the later case now personified by a new Foreign Minister.

Leadership changes at other institutions. The (anticipated) near-term departure of EU High-Representative Javier Solana will remove from the scene perhaps the most significant institutional actor other than the SG, but one who worked closely with SG Annan and the UN on a wide-range of non-European crises and conflicts. Similarly, the departure of Paul Wolfowitz from the World Bank will bring another round in the UN-World Bank relationship. Whether a new Bank President and a still-new Secretary-General can forge a more effective relationship than has held over the past decade remains to be seen. The absence of existing relationships between the leaders of these critical institutions is good and bad: lacking a reservoir of trust, but also baggage free.

> *"Mediation successes by Norway, Switzerland, and the EU, along with NGOs, signify a new maturity to non-UN mediation actors."*

Institutional competition

While confronting the above two sets of factors, the UN will be shaping its political role in a crowded and competitive field.

A crowded field. The number of institutional, governmental, and nongovernmental competitors to the UN's political and mediation role has grown steadily since the mid 1990s. But while even in the late 1990s many of these actors were episodic, poorly structured, inexperienced or institutionally immature, this has changed much of late. Mediation successes by Norway, Switzerland, and the EU High Representative, along with NGOs like the Centre for Humanitarian Dialogue (HD) and others, signify a new maturity to non-UN mediation actors.

Europe and the EU. This is perhaps most important when it comes to Europe. The EU's foreign policy machinery has begun to mature, and the proliferation of EU representatives constitutes a significant potential source of competition (or, possibly, collaboration) for UN mediation. Moreover, it is quite likely that continuing maturity of these structures will push European governments, which during the last 10 years were the bulwark of UN financial and political support, towards their own rather than global mechanisms.

The 'like-mindeds' go forum shopping. Moreover, a combination of the bitter experience of Iraq, perceptions that the World Summit reform effort failed to heal divisions or devise effective UN solutions, the warp and woof of US policy, new maturity in European institutions, and scandals at the UN have all combined to produce in the policy approaches of the 'like-mindeds' a new scepticism about the UN. As the UN's greatest backers during the expansionist 1990s, a shift in attitude among this group will create new pressures and new challenges for the UN, and could spur the further development of institutional competitors or alternative mechanisms. (In some respects, it could be healthy: some 'tough love' from states that are ultimately committed to UN success could be tonic in so-far stilted reform debates.)

UN-specific factors

While navigating all of these factors, however, the UN will be facing a number of its own 'issues'.

The UN's reputation has been tarnished in the eyes of many by its too-early engagement in post-occupation Iraq. Although this is unquestionably true, the dimensions of this issue are poorly understood (to this day, the UN has done no serious international polling of perception of this issue). There are new questions and critiques about the UN's political alignment, both in specific cases and in general, but what consequences this has is more complex.

For example, the brutal killing of Special Representative of the Secretary-General (SRSG) Sergio Vieira de Mello and 21 other UN staff members and associates in Baghdad is often cited as evidence of the UN having

been seen as too close to the US occupation authorities; but there is no actual evidence to this effect; and the fact that the International Committee of the Red Cross (ICRC), certainly not tainted by association with the occupation authorities, was similarly attacked some weeks later should give pause for thought. Indeed, a more persuasive conclusion was that the UN and the ICRC both were attacked because as agents of stabilization and humanitarian action, respectively, they were interfering with the core agenda of those (whether Al Qaeda affiliates, Baathists, or others) who sought to destabilize and to inflict suffering as a strategic tool.

Moreover, this argument is often made about other contexts with reference to a rise in attacks on humanitarian and UN personnel, as evidence of the growth in anti-UN sentiment based on perceptions that the UN is too-close to the US and too associated with occupations, the global war on terror, or other presumed ills. All fine and well, except that the evidence supports a more nuanced conclusion. A detailed study of attacks on UN and NGO civilian personnel revealed that taken as a percentage of overall number of personnel in the field, the level of attacks was actually almost flat; that there was indeed a slight decline in the overall percentage of international personnel that had come under attack, with a compensating rise in the number of local personnel; and that being deployed in an integrated mission, or alongside P5 forces or occupation authorities had no significant impact on levels of attacks.[2] More worryingly, a country by country breakdown of this data shows a far higher average level of attacks in predominantly Muslim countries.

Ban's unformed reputation. Secretary-General Ban Ki-Moon, a critical actor in shaping the overall political space available to the UN (though not necessarily in every mission context, as Teresa Whitfield has noted), is new to the scene and does not as yet have an established reputation as a mediator and political actor at the global level. This is good and bad: lack of baggage, but also a lack of established trust.

A generation of SRSGs passes from the scene. Meanwhile many of the 'big-name' SRSGs have left or are about to leave UN service. Brahimi and de Soto have retired; Ahtisaari will not likely engage in major new ventures; and de Mello was tragically killed in Iraq. Larsen remains engaged in the UN, but not full-time. Only a handful of 'rising stars' were cultivated by Annan and are currently in active service. This represents the loss of massive negotiation experience – though of course also an opportunity for fresh blood to be recruited.

UN peacekeeping faces risks with reputational consequences for the UN's political role. In several mission contexts – notably Somalia, Sudan, and Lebanon – the UN is engaged in peacekeeping ventures that carry substantial risks of failure and/or attack. In some of these contexts, notably Darfur and Chad, the ambitious goals initially set by the Security Council for UN operations are being scaled back. In other contexts, such as Burundi and Côte d'Ivoire, local resistance to an expansive UN role has constrained or curtailed UN peacekeeping presences. The consequences to the UN should peacekeeping experience a significant political downturn would not be limited to peacekeeping, but would impose substantial reputational negatives on the UN's broader conflict/crisis management role.

> *"Many of the 'big-name' SRSGs have left UN service. This represents the loss of massive negotiation experience – though also an opportunity for fresh blood to be recruited."*

New constraints on the SG's role. SG Annan's reform bid was taken by some Member States as an excessive bid for authority by the SG, and not just in the management arena. This has occasioned among several Member States, especially middle powers in Asia, a sense of wanting to re-assert Member States' control over the organization, away from an SG/Secretariat-dominated period. This coincides with a re-assertion of US interest in influencing the organization, as well as a rising sense in China of an ability to play a pro-active role through the permanent seat on the Security Council. The combination is resulting in a sharp decline (for now) in the extent to which the Security Council looks to the SG for leadership or policy frameworks; rather, the current mode is very much P5-led. This trend

2. Center on International Cooperation. http://www.cic.nyu.edu/internationalsecurity/docs/aidworkers_final.pdf.

is complicated by the deep reservoirs of distrust of the P5 that have been built up within the UN and among many regions and regional powers.

Strategies for response

Adapting to all of the above will require effective strategy. What follows are some possible elements thereof (necessarily cursory in their treatment).

Get war recurrence right

This may seem a surprising place to start for a note on political strategy; but the UN has developed a clear market lead and a solid reputation in peacekeeping, and should current peacekeeping missions, or follow-up offices, preside over relapse into violence in several or in significant cases, not only the peacekeeping role will suffer. Preventing war recurrence is a critical test and the most obvious place where the UN can effectively prevent further war. This will involve continuing to strengthen the Department of Peacekeeping Operations (DPKO) yes, but also the refashioning of the Department of Political Affairs (DPA) to allow it to play the role of articulating, in consultation with the UN Security Council (UNSC) and regional actors, a broad political strategy that can underpin and undergird peacekeeping operations. There is widespread political support for strengthening the Secretary-General's good offices function, and a strengthened DPA is a necessary corollary.

Also necessary will be fashioning effective relationships between the UN's political actors on the one hand, and the major development actors on the other (bilaterals, the World Bank, the IMF, regional development banks and the UN Development Programme) to help states emerging from conflict build the necessary institutional infrastructure to successfully transition from peacekeeping and peacebuilding operations to self-sustaining peace. The early efforts of the Peacebuilding Commission are not yet yielding this result, though it is too early to write off that institution; rather, a focus on avoiding war recurrence, and to that end laying the necessary economic and political foundations of sustained recovery, can help focus its work.

Manage regional variation

The UN has important political roles in Africa, the Middle East, increasingly Asia, Latin America and the Caribbean, and the Balkans. These roles vary widely across regions (and within them) and warrant not only differentiated strategies but different capacities. This can be highlighted

"There is widespread political support for strengthening the Secretary-General's good offices function, and a strengthened DPA is a necessary corollary."

by considering the very different political roles the UN plays in two regions, and potentially in a third.

In the Middle East, new security realities are being forged by the combustible combination of turmoil in Iraq, Iran's search for a nuclear deterrent, and (partially as a consequence of these two issues) a rise in Sunni/Shia tension across the region, as well as the descent of Palestine and Lebanon into political/factional fighting. The UN is differentially embedded in each of these theatres: institutionally, through the IAEA's role in Iran; politically, through the SG's good offices and the UNSC's resolutions on Iran, Syria and Lebanon; and through its peacekeeping presences (United Nations Interim Force In Lebanon - UNIFIL, United Nations Disengagement Observer Force in the Golan - UNDOF, United Nations Truce Supervision Organisation in Jerusalem - UNTSO). The growing connections between different aspects of the region bring added salience to the UN's role, but also substantial risks: not only is its ability to perform its role vulnerable to shifting priorities of the major powers and regional actors, but the political consequences of perceived or attributed failure in any one of these theatres could also be dramatic. Complicating this still further is that the definition of dramatic failure varies widely between different important audiences.

In Central Africa and the Horn, by contrast, the UN faces a burgeoning (if occasionally ambivalent) demand for its peacekeeping role, with new missions now mandated for Darfur, Chad, CAR and Somalia. Whether these missions come to fruition remains to be seen. If not, the UN faces a firestorm of criticism about its inability to come to terms with major internal chaos, massive human rights abuses, and regional contagion. If yes, it faces the prospect of overstretched, over-burdened and vulnerable peacekeepers in contested mission areas.

It is worth also mentioning in this regard apparently rising interstate tensions in North Asia. During SG Annan's final tour of Asia, including stops in Beijing and Tokyo, there were tentative feelers put out in terms of whether or not he personally might take on a political role, albeit a discrete one, in addressing the rising nationalism in China, Japan, and Korea. The nuclear issue on the Korean peninsula is a source of additional concern. The question of whether or not the UN has a comparative advantage in this terrain is open, as is the question of whether the current SG has the opportunity to play a role on these issues.

What is striking is how *different* these challenges are. Outside of southern Lebanon, the UN's role in the Middle East is political, media-sensitive, and directly engages major P5 and international capitals at the leaders' level. In the Horn and Central Africa, the UN's role is hugely operational, and suffers precisely from the lack of sustained, high-level political will. In North Asia, the role (if feasible) would require very discreet, sustained dialogue between and within very influential Member States. Organizing one institution to deal effectively with these and other variants poses significant political, managerial and operational difficulties.

Broaden the spectrum of political cooperation – the 'P5-plus'

On emerging conflicts and crises, it will likely be the Security Council more than the SG that takes the lead in shaping the political framework for response. For the SG, the implications of this are clear: although the SG must preserve some degree of independent political space, an effective role will require very, very close cooperation and coordination with Washington and Beijing and the other three Permanent Members.

Here, however, recent experience suggests that a P5-led process will be insufficient. Including other key actors as relevant to the politics of the case has proven critically important to Security Council effectiveness and UN legitimacy in several recent cases – with Germany and the EU on Iran, with South Africa on Burundi, and with Saudi Arabia on Lebanon. The role of Japan in the six-party process for North Korea is a non-UN case in point. The SG's opportunity will often lie in helping the Security Council orchestrate communication and joint strategy-making between these players. UN operational roles that emerge from joint action by P5-plus groupings are more likely to be perceived as legitimate and thus to be sustainable.

Cooperate with other actors

Bringing regional powers in is one option; another is working with regional organizations or other non-UN multilateral actors.

One of the reasons that UN peacekeeping has grown so substantially and successfully in the last six years is that that period coincides with a change in attitude at the UN, away from resistance against regional and non-UN entities, and towards cooperation with them. The birth of so-called 'hybrid' operations gave UN peacekeeping access to a wide range of operational resources, whether used to prepare the ground for UN peacekeeping, or to secure its continuing presence, or similar. It also opened up political space by bringing emerging regional actors (especially the EU and the AU) into the political process surrounding operations.

The successful management of the UN's political role in the coming period, particularly in terms of the SG's good offices, is likely to require the same approach: cooperation not competition. There is already substantial precedent for this, both in the Quartet in the Middle East (where the SG performs his political function alongside the US, the EU and Russia), a mechanism that has been repeatedly backed by the UNSC, notwithstanding substantial internal controversy about its positions; in the Balkans, where Ahtisaari serves as a UN Envoy but in practice also as the senior European diplomat on the issue; and on Iran, where the EU's Solana led the diplomatic charge, but in active collaboration with IAEA Director El-Baradai. And this precedent casts back to an earlier mode of the use of 'Friends groups' in peacemaking.[3]

The recently established Mediation Support Unit gives the Department of Political Affairs an important vehicle through which to support this kind of cooperation, and effective use of the MSU will be important in shaping other actors' receptivity on an ongoing basis to joint efforts with the UN.[4]

3. Whitfield, Teresa. *Friends Indeed? The United Nations, Groups of Friends, and the Resolution of Conflict*. Washington, DC: US Institute of Peace Press (2007).
4. For more on reform of the political elements of the Secretariat, see in particular Myint-U, Thant and Amy Scott. *The UN Secretariat: A Brief History (1945-2006).* New York: International Peace Academy (2006).

Build personnel

Ultimately, the UN's political role is vested in people. The passing from the scene of several of the Boutros-Ghali/Annan-era SRSGs means that the UN will have to identify a new cadre of senior envoys and representatives, or substantially increase its ability to identify and develop talent within. Substantial talent does exist within the body of the institution, both in serving SRSGs and Deputy SRSGs who are accumulating substantial experience and skill; in P5/D1 level staff within the Secretariat who have gained (unlike their generational predecessors) very high levels of field and political experience within the UN over the past ten years. There are also substantial (and often neglected) reservoirs of talent in the humanitarian and field-oriented funds, programs and agencies; deployment of such personnel into integrated missions and political missions has to date been frequently successful.

In addition to developing talent from within, however, the nature of the strategic terrain facing the UN should place a premium on recruiting into the organization experienced mediators/mediation support capacities from outside bodies, such as the EU, the AU and experienced Member States. This would help to forge the kinds of personal inter-connections that will be critical in making collaborative approaches to mediation work effectively.

Lingering questions

Adoption of these strategies or variants would, however, leave unanswered at least two major policy questions relating to the UN's political role: first, how should the UN relate to the question of substantial terrorist organizations, especially where these have gained institutionalized (especially elected) political roles? This partly relates to the problem of whether and how to engage such groups when 'engagement' can be seen as legitimating. Second, should the Secretary-General or Secretariat play some sort of role in mitigating broader international tensions among Member States – a question that is closely related to the first, given current international fault-lines.

By aspiration and ambition, the UN will need to find some way to grapple with this latter question. By recent experience, however, the UN is more likely to be a forum in which tensions get vented (and sometimes intensified) rather than resolved, often because they cannot be vented elsewhere or because venting at the UN is not seen as costly to other issues on Member States' respective bilateral agendas. If so, the Secretary-General will find himself repeatedly caught between irreconcilable positions.

The middle ground here is for the UN to refashion itself and its practices in a way that it can become a forum within which or through which these tensions can be managed, mitigated or in some cases collectively confronted – most critically on the treatment of terrorist groups and political groupings that overlap with terrorist organizations. This will require some shifts among the UN's major political actors – both leading Member States (especially the P5) and the Secretary-General and his key political lieutenants, both in the field and at headquarters. Here again it will be essential for the P5 to bring into the political and crisis management process other relevant powers. This can be on a case-by-case basis but it needs to be serious and sustained.

None of this will work, of course, unless the UN also addresses a further challenge – the weakness of its communication capacity vis-à-vis an evolving world of media. This issue is of course well beyond this already too broad note. Suffice it to say that until the UN is able to effectively explain its stance on the questions of terrorism simultaneously on Fox News and Al Jazeera, it will continue to be buffeted between divergent political forces, rather than fulfilling its core charter functions: either to find peaceful settlements of disputes; or to organize genuinely collective action against common threats.

Conclusion

In a world of mounting international tensions, turbulence at the leadership level, and institutional competition, the worst case scenario for the UN is that it will find itself limited even in its ability to define common threats, let alone to galvanize action against them.

The core political challenges for the Secretary-General will be, in the first instance, managing several balancing acts: distinguishing when it should lead and when it should follow; accommodating the reality of P5-plus dominance while heeding the necessity of maintaining a distinctive voice; finding a way both to mobilize the membership while also trying to be a forum for reconciling divisions among them. Developing the UN's political role in a way that is trusted by the P5, at a moment when the P5 have lost the trust of just about everyone else, is essential. Building effective, cooperative relationships with an array of major emerging powers and broader international constituencies will likely be the key to surviving this tricky balance.

The UN as conflict mediator: first amongst equals or the last resort?

Thant Myint-U

2006

Recognizing the important role of the good offices of the Secretary-General, including in the mediation of disputes, we support the Secretary-General's efforts to strengthen his capacity in this area.
2005 World Summit Outcome – 60th Session of the United Nations General Assembly

The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen.
'On good offices and mediation', The Hague Convention I (1899), Article 4

On 14 September 2005, at the World Summit, the 191 Member States of the United Nations agreed, amongst many other things in the Outcome Document, to strengthen the Secretary-General's (SG) "capacity" to mediate disputes. This was seen as a fairly innocuous commitment, packaged as part of a section on the "Pacific Resolution of Disputes". The more heated debate in the days and weeks leading up to the summit had been reserved for issues like the new "Human Rights Council" and the definition of terrorism. While diplomats in dark basement rooms bargained through the night over every aspect of the proposed "Peacebuilding Commission", support for strengthening "good offices" breezed through the floor of the plenary. Who could disagree that the SG of the United Nations should mediate disputes and mediate them well?

The UN's successful growth as a mediator

In one way, the matter is straightforward. The idea that the UN SG or his representatives should mediate in real or potential armed conflicts is an old one, dating back to 1946 and the civil war in Greece. Trygve Lie dispatched a 'fact-finding mission' to look into allegations of communist infiltration and in the process establish an independent role for the SG's office. Dag Hammarskjold took things a step further with his (successful) efforts to secure the release of American airmen held hostage in China, explicitly carving out a position for himself independent of the Security Council. It is not in the Charter, but over time, mediation has come to be seen as a natural role of the SG and one of the core functions of the Secretariat.

Since those heady early days, there have been notable successes, with peacekeeping operations emerging (in the aftermath of the Suez crisis of 1956) as an adjunct to this older role. Successful mediation by Secretaries-General continued through the depths of the Cold War. In 1963, U Thant, after persuading the parties to the Yemeni civil war to call for a UN observer force, even went ahead and established the force himself (borrowing troops from the United Nations Emergency Force in the Sinai), with Security Council authorization coming only days later. In 1971 the Secretariat resolved the simmering dispute between the UK, Iran and Bahrain. Though left out of many big disputes, the Secretariat was involved in helping prevent or end enough conflicts to establish a clear niche. By the late 1980s, though the Council had been deadlocked time and again, the role of the SG as the world's preeminent diplomat was well set.

The nearly two decades since the end of the Cold War have seen a vastly increased demand for UN mediation. On the one hand, with the disappearance of US-Soviet rivalries, many armed conflicts came to an end, with the UN being the obvious facilitator of many peace processes. In El Salvador, Namibia and Cambodia, there was a fresh round of positive UN involvement; and many newer wars – mainly in Africa – opened up to third party mediation. As peacekeeping and post-conflict peacebuilding increased in complexity, active mediation started to continue long after the peacekeeping troops were deployed. By today, there are no fewer than thirty-seven Special and Personal Representatives and Envoys of the SG as well as headquarters-based Advisors and Under-Secretaries-General involved in one aspect or another of peacemaking. Some head or manage peacekeeping operations but many others lead efforts to end still active wars.

> *"Especially when conflicts are internal, sovereignty arguments raise their grey heads, and it seems UN involvement becomes particularly distasteful."*

It would thus appear that in this uncontroversial area of UN endeavour, the Secretariat's capacity – limited as it seems – should be immediately increased and at this very moment efforts are underway to expand the Department of Political Affairs and hire new staff. It seems there will be more conflicts, more places for the UN to mediate, a greater need for UN mediation.

A unique selling point as a mediator?

But is everything so straightforward? At the beginning of the 21st century, is the UN really the best organization to mediate armed conflicts? Are there specific kinds of war or particular parts of the world where the UN is better able to perform this mediation role? Compared to the alternatives, what special advantages do the SG and his envoys enjoy? What special disadvantages do they face? And what does this mean for strengthening future "capacity"?

These are questions to ask because mediation is not and has never been the sole preserve of the UN and because alongside the successes (and despite the slightly rosy narrative just above) there have been notable UN failures as well (for example over Vietnam in the 1960s and the Middle East for a long time). Conflicts have always been mediated and ended by third parties, including governments and institutions, other than the United Nations. And even where the UN has been very much involved – say Cambodia in the late 1980s and early 1990s – others have played the pivotal role in moving positions and perceptions towards formal negotiations.

It is an increasingly crowded (and unregulated) field, with not only governments being involved, but with a wide array of regional and international organizations and nongovernmental organizations and private citizens inserting themselves into foreign wars and international disputes. Some have been successful, for example the roles played by the Community of Sant'Egidio in Mozambique, or the Centre for Humanitarian Dialogue followed by President Martti Ahtisaari and his Crisis Management Initiative in Aceh. And the UN at sixty years shows a degree of wear and tear that encourages deeper reflection about its comparative advantages – to understand better the situations for which the UN is best suited and what this means for the kind of capacity the UN Secretariat needs to have.

Different wars for different mediators?

Armed conflicts may be categorized or divided up in different ways. One might, for example, think about them in terms of where they are in time: are they at the beginning of the war, still at a stage when there is much fight left in all the parties, when there is little appetite for compromise? Or are they nearer the end, when one or both sides are exhausted and looking for a way out? Is the UN well-suited to help ripen a conflict for mediation, or is this a task best left for others?

Another way would be to divide conflicts between those where there is significant outside leverage or interest (e.g. Sudan, Afghanistan, Iraq, Israel-Palestine) and those which are fairly self-contained and where the fuel for war is largely internal (the Philippines, Southern Thailand).

> *There is still no substitute for the UN's moral authority and convening power.*

Are the parties to the conflict substantially dependent on outside governments and are they amenable to external pressure? Or is at least one side a home-grown power, with little foreign influence? Is the UN best as mediator when there is a strong international dimension to the conflict? Especially when conflicts are internal, or are linked to painful decolonization processes, sovereignty arguments raise their grey heads, and it seems UN involvement becomes particularly distasteful (at least to one party, such as Indonesia on Aceh, following Timor Leste's painful independence).

A third way would be to see conflicts as either involving a big power or not. Are there important international strategic issues at stake? Is the US or another powerful Permanent Member (P5) committed to a particular outcome? Is the UN hand strengthened or weakened when such big power interests are involved? And how best can the role of the Secretariat as mediator be managed alongside the position of the Security Council?

There are of course countless other ways to categorize conflicts – whether they are internal or intrastate, whether they have led to a major international humanitarian operation or not, etc. Which kinds are more suited for UN mediation? To think about this, one needs first to think about the UN's own comparative advantages and disadvantages in ending war.

Advantages

The most obvious of the UN's advantages is that it is the world's only global organization with unparalleled legitimacy. Though this legitimacy may be strained at times and be different in different parts of the world, there is still no substitute for the moral authority and convening power of the UN. A second advantage is the very breadth of the UN system. The UN system, though unwieldy and lacking any real command and control system, is still joined up in many ways, with the Secretariat and the various agencies, funds and programmes involved in almost every conceivable issue. Only the UN can both mediate, start-up and manage a peacekeeping operation, raise funds and deliver humanitarian assistance, and lead a process for longer-term reconstruction and development. Seen in its best light, the UN is a one-stop shop offering at least the possibility that this will lead to a better coordinated international response.

There are also other advantages that the UN Secretariat should have, but does not. The first is institutional memory. Despite being the world's pre-eminent international mediator for six decades, there is very little knowledge of past experience, let alone a good system for ensuring that lessons are well learned. What memory there is rests in individual people rather than in the organization itself and these people are few and far between. The UN should have a second advantage over others, in being able to draw from a pool of able mediators, able diplomats with a good understanding of the UN system as well. But whilst there are senior diplomats who have worked for the UN more than once, there are virtually no experienced in-house mediators, in particular at a middle-level, who can be called upon to lead or support negotiations.

Disadvantages

Against these real or potential advantages, there are several important disadvantages. One is confidentiality. Especially in cases where the parties to the conflict may be uncertain about the benefits of outside mediation, there may need to be a fairly quiet, initial period of confidence building, away from any public view. Quiet diplomacy should be a very old hat for the UN SG and his team, and there were plenty of Cold War examples of confidential UN initiatives. But in recent times, very few things easily escape the glare of media attention and the pressure to speak out and engage (however fruitlessly) in more public diplomacy; Darfur or Myanmar provide examples. For the UN more than others, a confidential process may be more difficult to sustain. This is particularly true when it comes to conflicts involving non-state actors. It's one thing for the UN Secretariat to be in discreet talks with states who are parties to a conflict; for the UN to initiate contacts with non-state actors may be much more difficult and bring immediate censure, either from the state concerned or from other interested governments. More generally, the UN Secretariat may not be well-placed to deal

with non-state actors, given the often roundabout way that contacts with them may need to be initiated and then maintained. Though the Secretariat is notoriously opaque in many ways, it is also sometimes unhelpfully transparent. A lumbering bureaucracy may be at a handicap, compared with a private actor or even a government in engaging with rebels and insurgents.

In addition, the sensitivities of the UN's Member States, and in particular the more important ones (like the Russians over Chechnya or the Chinese over Taiwan or Tibet) will more or less ensure that the Secretariat has very little or no room to act, however discreetly. There is also another side to this – the perception by many that the SG, in certain situations, is acting as an agent for big power interests. In places where the US for example has a keen interest, such as in the Middle East, the ability of the SG to be, or at least to be seen as, impartial is likely to be extremely limited.

> *In places where [a big power] has a keen interest, such as in the Middle East, the ability of the SG to be, or at least to be seen as, impartial is likely to be extremely limited.*

Yet another disadvantage is the flip side of the UN Secretariat and the UN's mediators being part of a broader system: the UN has many different agendas, norms and standards to maintain, and this may hinder the flexibility necessary for successful mediation. Parts of the system may for example have strong views on a given human rights situation and there may even be a human rights rapporteur for that country (for example Myanmar); this might then make more difficult the work of a prospective UN mediator attempting to enter into a dialogue with the local government. Or it might be that the UN is very much involved in addressing emergency humanitarian needs and may already have a large field presence. It may not be in the interest of either the mediators or the managers of the humanitarian operation to have their fortunes closely linked to one another.

A special role amongst mediators?

It would seem then that there are at least some instances when the UN's disadvantages might outweigh its advantages and when a private actor, a government acting alone or a regional organization might have better luck. In these cases, should the UN simply stand aside? And what is the cost of the UN standing aside, of being marginalised?

Simply standing aside entirely is rarely an option for the UN (unless it involves a dispute internal to a big power, for example the Uighur rebellion in China). It must in some way respond to every war, if not through attempted diplomacy then through statements of concern by the SG and the offer of humanitarian assistance. If there is other third-party mediation under way, however quietly, the UN Secretariat should, first and foremost be at least able to assess these efforts for itself and at least try and do no harm.

Secondly, the UN should be able to still set certain standards and norms for mediators and mediation. There are many thorny issues involved in peace negotiations – the question of amnesty for instance for people who should otherwise find themselves before the International Criminal Court. The UN Secretariat and the UN more generally could play a useful role in leading discussions on these issues, providing some normative framework for mediation and ensuring that private or bilateral mediators are at least aware of certain international standards.

Standing aside might also be a temporary position. In sticky and protracted conflicts involving non state actors, where big power interests might make UN Secretariat involvement unattractive, a successful peace process might be one initially groomed by a non-UN actor. But at a certain stage, the legitimacy and convening power of the UN and the ability of the UN to stand up a peace operation might be of critical value. How can we judge the moment at which a more active UN Secretariat role would become useful? For example, what situation in Sri Lanka would warrant a UN as opposed to a Norwegian lead? This means that even in cases where others are in the lead, the UN should have the capacity to analyse and monitor developments, see how to be most useful from the sidelines and prepare for playing a more central role at the right time. Sadly, the Secretariat is rarely resourced or configured to play these functions.

> *The UN has many different agendas, norms and standards to maintain, and this may hinder the flexibility necessary for successful mediation.*

Areas for strategic focus for the UN as a pre-eminent mediator

To return to our starting point, then – what sort of "strengthened capacity" does the UN Secretariat really need? I return to the potential but unfulfilled advantages of institutional memory, and cultivation of a pool of experienced mediators.

Though every situation is different, and though a proper understanding of the local context, local history and local politics is essential, it would also seem that every peace process has something to learn from past failures and successes. Whilst academic and policy institutions might be the most appropriate places to ponder the recent past, it would also be useful for the UN to offer up its own experiences in a systematic way. Whilst lessons have been learned (to some extent) from peacekeeping operations, UN mediation tends to be seen more as the preserve of gentlemen, rather than a professional niche requiring certain skills and training. Successful UN mediators have been successful by accident, because of their own innate abilities, or because of training elsewhere, rarely if ever because of knowledge imparted by the UN itself.

On cultivating a pool of mediators, who could be used not just by the SG but by others, like the AU or ASEAN, or even governments, the challenge is to broaden the scope of the search. The UN has traditionally drawn mediators from the ranks of government foreign services and while this has often served the UN well, surely there is the need to broaden the pool, geographically but in other ways too, to include people who not only have the requisite diplomatic instincts and skills, but who are familiar with the UN system and its practices. Some could be UN staff, but others could be on standby, working elsewhere, available as opportunities come up.

Developing institutional knowledge and promoting training towards a future pool of mediators need not be a labour-intensive enterprise for the Secretariat. The last thing the world needs is a new adjunct to the UN's bureaucracy. Rather, there is a need for a very small capacity, perhaps turning around existing moribund resources, which could help direct and join together a range of external efforts. This would be something of use whatever the future balance between UN and non-UN mediation. Universities, think-tanks and others could be connected and used to help the UN Secretariat turn conflict mediation, if not into a profession, then at least a respectable craft. Finally, the Secretariat needs a first-class analysis capacity, a point alluded to above, with its strategic centre close to the SG himself (even if some of its work is outsourced). He needs to understand all the intricacies and complexities of a given conflict, and thus when to support a non-UN effort or push for his own good offices.

The world summit decided to support the SGs efforts to strengthen the Secretariat's mediation capacity. This would be best done with a clearer understanding of the UN's comparative advantages and a better sense of how the UN can assist, even when not itself taking the lead in mediation.

GUEST LECTURE

The peace-justice interface: where are we now and what are the challenges ahead?

Guest lecture by Fatou Bensouda, Prosecutor of the International Criminal Court

2015

Excellencies, Distinguished Guests, Ladies and Gentlemen,

Allow me at the outset to express my gratitude to the Royal Norwegian Ministry of Foreign Affairs and the Centre for Humanitarian Dialogue for their gracious invitation, which has given me this opportunity to share a few thoughts with such distinguished company at this lunchtime lecture. I am humbled by the collective experiences of so many eminent experts in the field of peace and mediation, brought together in these beautiful surroundings on the occasion of the 2015 Oslo Forum. I have enjoyed and immensely benefited from our exchanges and discussions yesterday and this morning.

It is a great privilege to share with you my experiences on the interplay between peace and justice as Prosecutor of the International Criminal Court (ICC). How to effectively realise sustainable peace is a critical and complex question, and given the number of conflict zones around the world today, is one that requires our full attention. While certainly not a panacea, I do believe that law – effectively and timely enforced – can serve as an important tool to stop and prevent violence, and to pacify communities gripped by conflict.

When carefully considered, the fight against impunity for atrocity crimes, which is the cornerstone of the Rome Statute, can indeed make a significant contribution to the pursuit of peace and security in the world. As we have repeatedly observed, the lack of meaningful and effective accountability for atrocity crimes emboldens perpetrators to continue their heinous crimes unchecked. Additionally, the accountability vacuum created in the absence of justice can not only prolong the bloodletting, but also the intensity and organisation of mass violence. The creation of the International Criminal Court responded to humanity's need: the need to finally ensure that those most responsible for genocide, crimes against humanity, war crimes and potentially, the crime of aggression in the future, are held accountable for their despicable crimes.

> *"The lack of meaningful and effective accountability for atrocity crimes emboldens perpetrators to continue their heinous crimes unchecked."*

As the Preamble of the Rome Statute states, atrocity crimes are the most serious crimes of concern to the international community as a whole, as they shock the conscience of humanity and endanger the peace, security and well-being of the world. The effective investigation and prosecution of such crimes is meant to contribute to their prevention. The debate on peace and justice has always been an important one, and has received much interest. But I believe it has been somewhat misconstrued.

When states gathered at the Rome Conference in 1998, they recognised the intrinsic link between peace and justice, which they settled – legally speaking – under

the Rome Statute. With the entry into force of the Rome Statute, a new legal framework has emerged that sets new parameters of relevance for resolving conflicts. The issue is no longer about whether we agree or disagree with the pursuit of justice in moral or practical sense; it is the law accepted by 123 State Parties, with Palestine being the latest addition earlier this year. State Parties, by acceding to the Rome Statute, in effect accept that justice is an integral part of conflict resolution and the creation of sustainable peace.

As a result, when a peace process is initiated, the question should not be about a contest between peace and justice, whether peace and justice can be sequenced or whether under certain circumstances, I, as the ICC Prosecutor, should refrain from exerting my mandate. Rather the line of query should focus on what mechanisms can be employed to ensure that those most responsible for atrocity crimes are held accountable, in accordance with State Parties' obligations under the Rome Statute, while achieving lasting and viable peace and stability.

This is not to say that the intricacies of peace initiatives and consideration are of no interest or relevance to my Office. In most situations before the Court, conflict management and peace initiatives have been underway while our preliminary examinations or investigations and prosecutions are proceeding. I would therefore like to elaborate further on what our exact role is and how we fulfil it. I will conclude with some remarks on 'the interests of justice' under the Rome Statute, which I am sure will be of interest to our peace mediator colleagues.

Role of the ICC in peace processes

As you may already be aware, my Office is currently examining nine situations in Afghanistan, Georgia, Palestine, Iraq, Colombia, Guinea, Nigeria, and Ukraine to name a few – with a view to determining whether there is a reasonable basis to proceed with an investigation. This preliminary examination stage is an information-gathering process that, as a mandatory activity under the Rome Statute, drives and permits my Office to determine matters of jurisdiction and admissibility.

In addition to the nine preliminary examinations, we have equally opened investigations in nine other situations, the most recent ones being those in Mali and in the Central African Republic. In discharging its mandate, my Office acts independently and impartially, strictly applying the law and objectively following the evidence. We execute our mandate without fear or favour wherever our jurisdiction requires us to act.

> *"Political considerations relating to peace and security do not and will never form part of the decision-making in the Office of the Prosecutor."*

Let me first reiterate and underline that my Office's role under the Statute is a strictly legal and judicial one. Because of its judicial mandate and to preserve its impartiality, the Office cannot directly participate in peace initiatives. Political considerations relating to peace and security fall within the mandate of other actors, and certainly do not and will never form part of the decision-making in the Office of the Prosecutor. At the same time, the interplay between conflict resolution initiatives and justice is a prominent feature in all the situations where we are currently working.

We are of course fully aware of the political realities and sensitivities involved, and indeed, we are keen to play a constructive role within the prescribed limits of our mandate as set by the Rome Statute. For instance, where possible, we will inform political actors and mediators of our actions in advance, so that they can factor investigations into their activities. I wish to stress here that the existence of the Court and the conduct of investigations by my Office do not preclude or put an end to peace processes.

If anything, the 'Shadow of the Court', as the UN Secretary-General has once named it, has given substance to the now widely-accepted notion that impunity for atrocity crimes and blanket amnesties for those most responsible for perpetrating them are no longer an option. Beyond that, recent examples demonstrate that it is not only desirable but actually possible to reach peace without abandoning justice.

> *Recent examples demonstrate that it is not only desirable but actually possible to reach peace without abandoning justice.*

The Central African Republic is a case in point. The Bangui Forum held last month concluded successfully with the signing by all parties to the conflict of a framework agreement which explicitly rejects impunity and stipulates support for a truth and reconciliation commission, the Special Court being established to address impunity, and ICC investigations.

Second, under the Rome Statute, the jurisdiction of the ICC is complementary to that of states. My Office only investigates and prosecutes crimes where states either cannot or will not do so genuinely – as the ICC is a court of last resort. The situation in Colombia is a clear example where my Office determined that a reasonable basis did exist to believe that war crimes and crimes against humanity had been committed by all sides in the armed conflict in Colombia; however, no investigation has been opened to date by my Office, because the principle of complementarity of jurisdictions came into play. In fact, there are also reasons to believe that the 'Shadow of the Court' induced prosecutors, courts, legislators and members of the Executive Branch to make certain policy choices in conducting investigations and prosecutions, and setting up accountability mechanisms, starting with the *Justice and Peace Law*. Representatives of my Office meet regularly with the Colombian authorities to consult on justice issues.

Colombia, as a State Party to the Rome Statute, has engaged with my Office in a positive approach to complementarity. I am grateful to His Excellency President Santos for this committed engagement, and his eloquent remarks yesterday about his country's pursuit of sustainable peace secured on the strength of justice and accountability and a recognition of the centrality of the plight of victims. I commend him in these efforts. Colombia has been under preliminary examination by my Office since 2004. As per our duties, we continue to inquire into relevant national proceedings to determine whether those most responsible for the most serious crimes alleged to have been committed by all parties to the conflict are being brought to account. As you all know, critical negotiations are being conducted in Havana between the government of Colombia and the Revolutionary Armed Forces of Colombia (FARC). Needless to say, I wholeheartedly support the efforts to end the armed conflict that has caused immense suffering in the country over five decades – of course, the requirements of the Rome Statute to which Colombia has subscribed will continue to ensure that accountability is an integral part of such crucial efforts.

An important question at this juncture is therefore how a peace agreement may affect national proceedings and impact on the Office's assessment of the admissibility before the ICC of cases arising out of the situation in Colombia. It appeared to my Office that those within the FARC and the National Liberation Army (ELN), who were alleged to be the most responsible for the most serious crimes, had been the subject of genuine national proceedings. This conclusion was reached on the basis of sentences passed by Colombian judicial authorities on FARC and ELN leaders for conduct relevant for the ICC. The conclusion was, however, made subject to the appropriate execution of the sentences.

While the Rome Statute does provide for sentences in ICC proceedings, it does not prescribe the specific type or length of sentences that states should impose for ICC crimes. In sentencing, states have wide discretion. National laws need only produce genuine investigations, prosecutions and sanctions that support the overarching goal of the Rome Statute system of international criminal justice – to end impunity for atrocity crimes.

Effective penal sanctions may therefore take many different forms. They should, however, serve appropriate sentencing goals, such as public condemnation of the criminal conduct, recognition of victims' suffering, and deterrence of further criminal conduct. The Colombian authorities are fully aware of their responsibilities under the Rome statute and vis-à-vis the Colombian population. This is by no means an easy task. I am mindful of the historic challenge Colombia is facing. As I have conveyed on multiple occasions, my Office is at the disposition of Colombia to offer any assistance that

is within our realm to play a constructive role and ensure that the cycle of impunity is broken, while reaching lasting peace.

The 'interests of justice' under the Rome Statute

Before concluding, I would like to briefly touch on the notion of the 'interests of justice' under the Rome Statute. The 'interests of justice' principle allows my Office to decline to open an investigation in certain exceptional circumstances. Allow me to elaborate.

For my Office to open an investigation, the conditions of jurisdiction and admissibility must be met. While these two tests are *positive* requirements, the 'interests of justice' is not. On the contrary, the 'interests of justice' is a potential *countervailing* consideration that might produce a reason *not* to proceed with an investigation, even where the questions of jurisdiction and admissibility have been satisfied. This difference is important.

My Office is not required to establish that an investigation or prosecution *is* in the interests of justice. Rather, as a general rule my Office must proceed *unless* there are specific circumstances that provide substantial reasons to believe it would not be in the interests of justice to do so at that time. Considerations of the interests of justice are entirely separate from those relating to complementarity. Complementarity pertains to admissibility: if national proceedings meet the complementarity requirements of the Rome Statute, that's the end of it – the case is inadmissible before the ICC. It is only when the case is determined to be *admissible* that a question may arise about the interests of justice.

The question of 'the interests of justice' must be interpreted in line with the Statute's object and purpose. This means that it cannot be conceived so broadly as to encompass all issues related to peace and security. That said, in assessing the interests of justice, my Office is obliged by the Rome Statute to consider the *interests of victims* and the *gravity* of the crimes – these are the two important factors that the Statute provides for expressly.

To put it simply: say, if the exercise of our jurisdiction were to aggravate the plight of victims, we would refrain from acting. After all, the ICC was created to address impunity for atrocity crimes with the interests of victims as the bedrock of its work. Furthermore, as I have said before, although the prosecution of atrocity crimes should promote sustainable peace, the State Parties to the Rome Statute created the ICC as a judicial institution and not as a peacemaking institution. Explicit peacemaking is the responsibility of other bodies, such as the United Nations Security Council and, of course, states themselves.

As you are aware, the Rome Statute under its article 16 empowers the Security Council to temporarily defer the opening of an ICC investigation or halt ongoing investigations and prosecutions, if it determines that they would jeopardize international peace and security.

For my part, under the statutory mandate I have received from State Parties, I have a duty to proceed when the criteria of the Rome Statute so dictate. Therefore, I must stress that only *in exceptional circumstances* will my Office conclude that an investigation or prosecution does not serve the interests of justice.

Hence, while our functions are purely legal, within the legal framework of the Rome Statute itself, first harmony between the interests of peace and justice has been provided, say through our legal obligation to assess the impact of our intervention on victims, and second, a clear 'separation of powers' between peace and justice functions has also been legislated.

> *"If the exercise of our jurisdiction were to aggravate the plight of victims, we would refrain from acting."*

Excellencies, Distinguished Guests, Ladies and Gentlemen, the international legal framework created by the Rome Statute emphasises the vital importance of ending impunity for perpetrators of the most serious crimes. This framework cannot be suspended or ignored as a matter of expediency. Indeed, the law must *no* longer remain silent during war and conflict, but be increasingly seen as a valuable instrument of peacemaking. Justice *must* play an integral part in efforts to realise sustainable peace, stability, and security.

This framework offers flexibility to states striving to deliver justice in post-conflict situations. Additionally, the criminal justice framework does by no means exclude other forms of accountability, in complementary fashion to investigations and prosecutions of the main perpetrators of atrocity crimes.

In Albert Einstein's timeless words: 'Peace is not merely the absence of war, but the presence of justice, of law, and of order'. By confronting destabilising atrocity crimes through the Rome Statute legal framework, the international community strives to ensure a sustainable transition from armed conflict to peace.

> *The law must no longer remain silent during war and conflict, but be increasingly seen as a valuable instrument of peacemaking.*

As ICC Prosecutor, I would like to underscore once again my support for any peace efforts in accordance with the principles and values that the State Parties have enshrined in the Rome Statute. I am certainly committed to doing my part to bring to justice perpetrators of mass crimes, and thereby contribute to the establishment of conditions of peace and stability wherever in the world my jurisdiction allows me to act. Our results are the sum of the actions of many actors involved. If perpetrators and would-be perpetrators of atrocity crimes are to be deterred, a strong and consistent message is required from all quarters – whether from the Court, State Parties, the UN Security Council, or otherwise – that the era of impunity is over; that law and justice will *not* be sacrificed at the altar of political expediency to the detriment of victims. Violence left untamed by the virtues of justice will beget a cycle of violence.

Ladies and Gentlemen, we must do all we can to ensure that security, stability and the *protective embrace of the law* become a reality to be relished *by all, in all corners of the world*. A world that invests in accountability will surely reap its peace dividends. Lest we forget that the olive branch of peace is barren without the trunk of blind justice.

The ICC: a straw man in the peace versus justice debate?

Laura Davis

2013

Summary

This paper aims to stimulate discussion within the mediation community about the role of the International Criminal Court (ICC) in peace processes. In a brief overview of the peace-versus-justice debate to date, it lays out the main arguments for and against the Court. The arguments 'in favour' are that prosecution individualises guilt and marginalises abusive leaders, and that the ICC strengthens the rule of law and has a deterrent effect. The main arguments 'against' are that the Court is politically biased, impedes peace processes and discriminates against Africans. Each argument is countered with a rebuttal.

The paper then argues that the ICC has become a 'straw man' in the peace and justice debate, being misrepresented sometimes. It is one actor among many in the complex fields of justice and peacemaking in which there are many international and regional human rights frameworks as well as other normative standards. The ICC is intended as a court of last resort, bringing to account the most responsible for the most serious human rights violations. In effect, the ICC only directly affects formal, Track I peace mediation. Besides the formal talks, there may be many different types of peacemaking, over which the ICC will have much less influence, if any. The ICC represents one strand of international criminal justice, but justice can be pursued through a whole range of judicial and non-judicial processes (transitional justice). Equating the ICC with justice oversimplifies the complexity of justice in (post-) conflict situations.

Against this background, the paper suggests that success for the ICC must be understood in relation to its role and limitations, rather than the expectations pinned to it. Elements of success in relation to peacemaking would include fairness, balance, independence and complementarity.

The paper closes with suggestions for greater synergies between peace and justice, including the Court. It suggests that mediators and the Court maintain an appropriate distance between them. Mediators have to integrate an increasing number of different normative standards into their approaches. The paper recommends considering justice beyond the narrow scope of international criminal justice, and highlights that the effects of institutional arrangements in peace deals on human rights, justice and even future violence are not sufficiently analysed, particularly by justice advocates. There are many options on the spectrum between ICC indictments and amnesty that are yet to be explored, and which could advance a pro-justice and pro-peace agenda.

"There are many options on the spectrum between ICC indictments and amnesty that are yet to be explored, and which could advance a pro-justice and pro-peace agenda."

Introduction

The Rome Statute of the International Criminal Court (ICC) came into force on 1 July 2002, and the Court currently has jurisdiction over genocide, war crimes and crimes against humanity committed after that date.[1] The Court begins investigations if situations are referred by the government of a State Party or the UN Security Council, or by the Prosecutor acting on his/her own initiative ('proprio motu'). There are currently 19 cases before the Court, from eight 'situations': Uganda, the Democratic Republic of Congo (DRC), Darfur (Sudan), the Central African Republic (CAR), Kenya, Libya, Côte d'Ivoire and Mali. Uganda, DRC, CAR and Mali are examples of 'self-referrals' as they were referred by the government. Libya and Sudan – both non-state parties – were referred by the UN Security Council. The situations in Kenya (a state party) and Côte d'Ivoire (a non-state party[2]) were the result of the Prosecutor acting under proprio motu.

The Court is conducting preliminary examinations in Afghanistan, Georgia, Guinea, Colombia, Honduras, Republic of Korea and Nigeria, which may or may not lead to investigation of the alleged crimes committed in the territories. In 2012, the preliminary examination in Palestine concluded that the Court would not open an investigation there, for example.

The ICC is a court of last resort. It is only intended – and able – to prosecute a small number of cases, ideally focusing on those who bear the greatest responsibility. Complementarity is a central principle of the Rome Statute: domestic jurisdictions must act where possible, the ICC acts only when the state concerned is unwilling or unable to prosecute these crimes. In other words, the ICC should complement national efforts, not replace them.[3]

State of the debate

The main points of debate between the 'justice' and 'mediation' communities – so far as either of these exist – concern the timing and type of interventions ('sequencing'), rather than the existence of the ICC. This section briefly summarises the dominant arguments in the debate.

> *Placing the blame for atrocities with named individuals rather than broader groups reduces the ability of group leaders to manipulate inter-group suspicion to achieve their political ends.*

'In favour'

Prosecution individualises guilt and marginalises abusive leaders. Placing the blame for atrocities with named individuals rather than broader groups reduces the ability of group leaders to manipulate inter-group suspicion to achieve their political ends. Defining these acts as criminal reduces the individual's respectability and public support. Although pre-dating the ICC, proponents of this argument cite indictments issued by the International Criminal Tribunal for the former Yugoslavia (ICTY) for Slobodan Milosevic and Radovan Karadzic and by the Special Court for Sierra Leone for Charles Taylor, as well as ICC indictments for the Lord's Resistance Army (LRA) leaders.[4]

Yet the hypothesis that indicting leaders from highly divided societies cuts off their support is increasingly challenged – ICC indictments seem to have contributed to President Kenyatta and Deputy President Ruto's electoral success in Kenya,[5] while the arrest of militia leaders in eastern Congo may have hardened sectarian divides in Ituri.[6] President al-Bashir of Sudan remains

1. For new State Parties, the date of jurisdiction may be later than 1 July 2002.
2. Côte d'Ivoire is not a State Party but has accepted the jurisdiction of the Court.
3. Hence the decision in October 2013 that the Al-Senussi case will proceed in Libya and is therefore inadmissible before the ICC.
4. Human Rights Watch. *Selling Justice Short: Why Accountability Matters for Peace*. New York (2010).
5. "What Kenya's withdrawal means for the international criminal court". *Kenya Today* (8 September 2013), available at http://www.kenya-today.com/facing-justice/kenya-withdrawal-international-criminal-court-credibility.
6. Personal observations, Ituri.

> *There are clearly cases missing, yet none of the cases before the Court is trivial or unsubstantiated.*

in office. This argument may also ascribe too much power to individuals and overlook the strength of the movements and/or causes of which indictees are part.

A second argument is that where local justice systems are weak, the ICC presents a viable alternative for justice and may help strengthen the rule of law and justice systems. However, this can also be seen as 'outsourcing' justice, potentially weakening the ability of national actors to strengthen national systems and prosecute crimes through the domestic system, contrary to the complementarity principle.[7] This argument has also been used politically to great effect by opponents of the Court in Sudan and Kenya.

A third key argument is that prosecution can have a deterrent effect and will make future would-be perpetrators choose a different course of action. Deterrence is very difficult to prove. The ICC cannot arrest indictees – it relies on national systems to transfer suspects to The Hague for trial – which must reduce any deterrent effect the Court may have. The Congolese government transferred three indictees (Lubanga, Ndjolo Chui and Katanga) to The Hague, but the authorities refused to hand over Bosco Ntaganda in 2009, saying that 'there are moments when the demands of peace override the traditional needs of justice'.[8] The Sudanese government has not handed over any suspects.

'Against'

Critics of the ICC point to political bias in the Court's activities: the UN Security Council referred the situation of Darfur to the Court, but not that of Syria. The Court has also been heavily criticised for a lack of balance in its indictments, giving the appearance of partial investigations. In Uganda, the now notorious joint press conference by Prosecutor Moreno Ocampo and President Museveni fuelled perceptions of bias. The ICC has issued indictments for leaders of the LRA but not for members of the Ugandan People's Defence Forces (UPDF), despite calls to investigate all sides in the conflict.[9] In Côte d'Ivoire, the ICC has indicted Laurent and Simone Gbagbo and Charles Blé Goudé (a Gbagbo loyalist) but no one from the pro-Ouattara camp despite evidence, including from an international committee of enquiry, that forces loyal to both sides had committed atrocities[10].

There are clearly cases missing, yet none of the cases before the Court is trivial or unsubstantiated. There is evidence that serious human rights violations, possibly amounting to genocide, war crimes or crimes against humanity, have been committed in each case. The question to be addressed – partly by the Court – is who is responsible for committing the violations. When Matthieu Ndjujolo Chui was acquitted by the Court in December 2012 of the charges of war crimes and crimes against humanity against him, the judges emphasised that their verdict did not mean that no crimes were committed during the attack on the village of Bogoro in February 2003 nor deny the suffering of the villagers, only that there was not enough evidence to find Mr Ndjujolo Chui responsible for the crimes.[11]

The second argument is that indictments impede peace processes, giving leaders no alternative but to fight it out, but there is no undisputed evidence for this claim. There was no meaningful peace process in Darfur at the time of the indictments. The Court may have impeded talks with the LRA, but ICC indictments are also said by some to have brought LRA leaders to the table, illustrating the difficulty of proving the impact of one strand of a complex process. The small sample size also means that personal calculations by indictees are not taken into account. Bosco Ntaganda's surrender to

7. Vinjamuri, Leslie. "Deterrence, Democracy, and the Pursuit of International Justice". *Ethics & International Affairs*, Vol. 24, No. 2 (2010): 191–211, 202.
8. Agence France Presse. "'Peace before justice', Congo minister tells ICC" (13 February 2009), available at http://www.google.com/hostednews/afp/article/ALeqM5hbGnGCoztEJHzIf5HMghzIMfjv6w.
9. Human Rights Watch. "ICC: 'Investigate All Sides in Uganda'" (5 February 2004), available at http://www.hrw.org/news/2004/02/04/icc-investigate-all-sides-uganda.
10. UN Human Rights Council. *Rapport de la Commission d'enquête internationale indépendante sur la Côte d'Ivoire*, Doc. A/HRC/17/48 (14 June 2011), available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3- CF6E4FF96FF9%7D/Cote%20d%27Ivoire%20A%20HRC%2017%2048.pdf.
11. International Criminal Court. Press Release: "ICC Trial Chamber II acquits Mathieu Ngudjolo Chui". Doc. ICC-CPI-20121218-PR865 (18 December 2012), available at http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/news%20and%20highlights/Pages/pr865.aspx.

the ICC via the US Embassy in Rwanda, for example, came as a surprise and was presumably based on his own calculations of his best interests.

The decision by the Nigerian authorities to end former Liberian President Charles Taylor's asylum in that country and transfer him to the Special Court for Sierra Leone has become known as the 'Taylor effect' – meaning the end of asylum/exile as an option in peace talks. This predates the ICC, but the Court reinforces the principle in many states. A State Party to the ICC may be reluctant to offer exile to someone they later may be asked to turn over to the Court, but this has apparently not happened in any of the current ICC situations.

There is some flexibility in the system. The Court can keep indictments under seal. In Congo, the warrant for Bosco Ntaganda was unsealed only after peace talks had concluded with the group in which he had a leading role.[12] The UN and other organisations may restrict direct contact between their mediators and indictees, but usually allow 'essential contact'. Article 16 of the Rome Statute enables the UN Security Council to suspend any investigation or prosecution for one year, on a renewable basis. Article 16 has not yet been used despite calls from the African Union, the Arab League and China for the UN Security Council to invoke Article 16 in relation to the warrants issued for President al-Bashir, President Kenyatta and Deputy President Ruto, so the effect of using Article 16 remains conjectural.

> *"The Court maintains a high level of independence but cannot remain immune to realpolitik, as Syria shows."*

A further serious criticism of the Court is that it discriminates against Africans ('race-hunting' according to AU Chairperson Hailemariam Desale[13]) and the AU has raised a number of concerns with the Court. There is general agreement that the Court must extend its geographical reach, and there are examinations ongoing in other continents. Seen another way, African states and civil society are strong supporters of the Court: 34 African states are party to the Court, compared with 18 states in the Asia-Pacific. After the AU's Sirte resolution in 2009 criticising the Court,[14] African ICC state parties led by Botswana and civil society organisations spoke out in support of the ICC. The South African government was strongly criticised for supporting the motion, not least by South African civil society. It then clarified its intention to honour its commitments as a State Party to the ICC.[15]

Problems with the ICC and peace debate

The influence of the ICC on peace processes is hotly debated and is only briefly summarised above. It seems that the role of the ICC has been overblown while the 'peace' part of the debate has been conflated with sovereignty, democracy and legitimacy as well as broader peace- and state-building. This has arguably complicated and muddied understanding of the Court's impact on peace mediation.

The ICC is one tool of many in the international peace and security architecture. However flawed it may be, the UN Security Council remains the ultimate arbiter of international peace and security, and the Court's level of independence from the Security Council is a constant negotiation. The Court currently maintains quite a high level of independence but it cannot remain immune to realpolitik, as the case of Syria shows. Although some of its supporters may wish the Court were truly independent of the Security Council, full independence would likely mean the end of the Court. Debates about the Court's jurisdiction show that the Permanent Members of the Security Council will not allow a fully independent court.

There is no uncontested example of the Court helping or hindering a peace process. This is partly because the

12. Davis, Laura and Priscilla Hayner. *Difficult Peace, Limited Justice: Ten Years of Peacemaking in the DRC*. New York: International Center for Transitional Justice (2009): 33.
13. BBC News Africa. "African Union accuses ICC of 'hunting' Africans" (27 May 2013), available at: http://www.bbc.co.uk/news/world-africa-22681894.
14. African Union. *Decision on the Meeting of African State Parties to the Rome Statute of the International Criminal Court (ICC), Sirte, Libya*. Doc. Assembly/AU/13 (XIII) (3 July 2009).
15. Du Plessis, Max. *The International Criminal Court that Africa Wants*. Pretoria: Institute for Security Studies (2010): 15–17.

Court is so recent and the sample size so small. Analysts tend to include examples of other international justice initiatives, like the Special Court for Sierra Leone, or the ICTY (as above), even though these are qualitatively different temporary courts set up to examine specific conflicts.

In some conflicts, the Court is simply not relevant because the state concerned is not a State Party and the conflict is not of high enough international or regional interest to engage the Security Council. Alternatively, regional powers may be able to resist ICC engagement – it seems unlikely that the Court will intervene extensively in Asia, for example, given the resistance of Russia, China and India to the Court and the low number of state parties.

The focus on the ICC tends to overshadow other human rights frameworks, which arguably have greater (potential) influence on peace processes, and often have a wider geographical reach. The question of amnesty is illustrative. Although the Rome Statute does not mention amnesty explicitly, some provisions have been interpreted to render invalid amnesties for the crimes coming under the Court's jurisdiction, but this has not been tested.[16] UN policy is clear: 'United Nations-endorsed peace agreements can never promise amnesties for genocide, war crimes, crimes against humanity or gross violations of human rights.'[17] UN Security Council Resolution 1820 (2008) calls for the exclusion of sexual violence crimes from amnesties, for example. Regional organisations may also bring to bear their own human rights frameworks.

> *"Mediators and the Court need to remain independent of each other, while maintaining (indirect) communication."*

Prosecution and amnesty are not the only justice responses to human rights violations. Transitional justice is a set of judicial and non-judicial approaches, including prosecutions, truth-seeking, reparations and institutional reform, that societies may use to deal with the legacy of massive and systematic human rights violations. The core principles of transitional justice emerge from international human rights, humanitarian and criminal law, particularly the obligation on states to investigate and prosecute human rights violations and to prevent abuse, and the rights to remedy, truth and reparation. There is however no single blueprint in law for whether, how and when to implement transitional justice – states navigate these potentially competing rights within the parameters of their political and social realities.

Mediators may also have to take into account other normative standards. In Madagascar, mediators had to consider AU and SADC normative positions on human rights and the non-recognition of unconstitutional transfer of power, which due to the circumstances of that process were effectively in competition. Mediators may also be restricted by sanctions regimes imposed on individuals by the UN or other bodies, or by the proscription of certain groups by governments or international organisations. (The Court has jurisdiction over persons, it does not proscribe groups.)

The focus of the ICC and peace debate is almost exclusively at the formal, Track I level, perhaps due to the high profile of both ICC indictments and high-level peace processes. This overshadows extensive peacemaking at other levels, where the impact of the ICC is likely to be much less tangible. For example, while some of the high-level LRA leaders have been indicted by the ICC, lower ranks of fighters, particularly those outside Uganda, are treated as victims of the LRA to encourage defection and demobilisation.

What constitutes success for the ICC?

Defining success for the ICC is a huge task. Yet, however it is defined, it should relate to the ICC's role and limitations rather than the expectations pinned on

16. In the preamble: 'it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes' and Article 27 states that immunities enjoyed by heads of State, for example, are not a bar to prosecution by the ICC for these crimes.

17. UN Secretary-General. *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies,* Doc. S/2004/616 (2004): 5. (Note that there is no universally agreed definition of what constitutes 'gross human rights violations').

it. In any case, ICC success in the context of peace mediation, would surely include the following elements:

Fairness. The Court tries people accused of the most serious crimes, therefore it has to conduct fair trials. Success cannot therefore only be measured by numbers of indictments, trials and convictions, but must also take into account acquittals (e.g. Mathieu Ngudjolo Chui).

Balance. As discussed above, the Court is accused of bias in the indictments it issues and in the situations it pursues. It must be seen to be impartial in the situations in which it intervenes. It must also broaden its geographical reach.

Independence. Negotiating the Court's independence from the UN Security Council remains delicate, but the more independent, balanced and fair the Court is seen to be, the more it may be trusted. The Court should also remain independent from mediators, as well as parties to a conflict.

Complementarity. A lack of cases can also be a sign of success for the Court, either because deterrence has worked, or – more likely – because national systems have investigated and prosecuted the crimes themselves.

Over time, it may also be possible to assess the sustainability of peace in situations where the ICC has intervened, but isolating the contribution of one actor in peacebuilding is fraught with the difficulties associated with feasible attribution. The Court should do no harm, yet assessing what harm is (not) done by the Court acting or not acting may also be highly conjectural.

The Court has well-known weaknesses, such as the inability to arrest. It has also been criticised for indicting sitting heads of state. The Kenyatta/Ruto trials may show that the ICC is not able to prosecute sitting heads of state, particularly those elected in countries with economic and geopolitical weight. The Kenyan parliament's vote in September 2013 to withdraw from the Rome Statute is unlikely to affect these trials. Boycotted by the opposition, the vote is perhaps little more than an expression of the governing coalition's hostility to the Court. But there is no doubt that the trials are a difficult test for the ICC. There are complex practical questions, from scheduling court appearances for the president and deputy president, safeguarding evidence, and allegations of witness intimidation.[18] Some African states support an end to the trials, raising their concerns through the African Union, or by filing legal observations (amicus curiae briefs) through the Court itself.[19]

> *The rights to remedy, truth and reparation may influence peace processes, but there is no requirement that they be addressed directly.*

The Kenyatta/Ruto trials may be a watershed for the ICC, and also for Kenya and the African Union. The debate focuses on whether or not the ICC should be able to investigate and prosecute serious crimes allegedly committed by senior elected politicians. This overshadows the other side of the same debate: if the ICC cannot or should not investigate and prosecute serious human rights violations, like the post-election violence in Kenya, will another institution – Kenyan, regional, or international – be able to bring those responsible to account?

It is possible that a compromise will be found, for example that future indictments have to wait until after the accused has left office. Such a compromise has potentially far-reaching consequences. In relation to particular trials, evidence could be lost and witnesses silenced. More broadly, this would be likely to contribute to conflict over time by creating incentives for politicians to refuse to relinquish power, undermining the democratic process, and to use their positions to influence the justice system, undermining the rule of law and human rights.

18. The latter led to the indictment of Walter Osapiri Barasa on charges of influencing witnesses.

19. Kersten, Mark. "The Price of Deference: Is the ICC Bowing to Pressure in the Kenya Cases?" *Justice in Conflict* blog (16 September 2013), available at http://justiceinconflict. org/2013/09/16/the-price-of-deference-is-the-icc-bowing-to-pressure-in-the-kenya-cases/.

> *If security arrangements entrench impunity within the security and justice sectors, no justice initiative is likely to succeed.*

Improving synergies for peace and justice

The peace and justice debate remains central to peacemakers and justice advocates alike. Closer scrutiny of the actual roles and limitations of the ICC, rather than the expectations pinned on it, and more clarity on the broader peace and justice landscape can help mediators and justice activists achieve both peace and justice. The following guidance may be helpful in this regard.

Appropriate distance between Court and mediators
Mediators and the Court need to remain independent of each other, while maintaining (indirect) communication. Mediators have passed limited, factual information about the Court to parties, for example.[20]

Mediators may be prohibited by their institutions from all, or all but essential, contact with indictees. To date, mediators have not been prevented by ICC indictments from dealing with other, non-indicted members of the same group. The ICC has no power to proscribe groups, only to accuse individuals, so this is unlikely to change.

Unsealing indictments may be sensitive and may need to be timed to try to minimise any disruptive impact on talks.

Integrating the increasing number of normative frameworks
The ICC is not alone in pushing for an end to impunity in peace processes, and neither, arguably, does it have the furthest reach. The human rights frameworks of the UN and regional institutions, for example, influence peace processes in situations where the ICC has no jurisdiction. The (policy) prohibitions on blanket amnesties stem from the UN, not the Court, for example, while UN Security Council Resolution 1325 requires mediators to take into account a range of issues related to gender and women's participation.

In the course of peace processes, mediators may have to take other normative standards into account, such as the non-recognition of unconstitutional transfer of power, which may compete with human rights obligations.

Considering justice beyond international criminal prosecutions
The rights to remedy, truth and reparation may influence peace processes, but there is no requirement that they be addressed directly and no blueprint for how this may be done. The trend is, however, for peace processes to take justice into account including through transitional justice approaches as well as criminal prosecutions. A more holistic approach to justice may be more effective for promoting justice in peacemaking at and beyond the formal, Track I levels. This includes prosecutions at the national and international levels, and also truth-seeking, reparation and institutional reform.

Justice provisions need to be examined carefully, however, from both justice and peace perspectives. The pursuit of accountability through transitional justice initiatives may risk destabilisation, increased violence or even a return to conflict. The trials of powerful leaders may provoke instability if they or their supporters try to resist prosecution. Trials may further reinforce divisions in society, or, in some cases, transitional justice initiatives may be externally imposed and culturally inappropriate.[21] Yet entrenching impunity may stymie future efforts to address the past and may contribute to future conflict.

Assessing the impact of peace deals on justice
The type of institutional arrangements agreed in a peace deal may have a more important impact on justice and human rights than the explicitly justice-related provisions in the deal. In Kenya and the Democratic Republic of Congo, for example, the power-sharing

20. Davis, Laura and Priscilla Hayner, *Difficult Peace, Limited Justice: Ten Years of Peacemaking in the DRC*. New York: International Center for Transitional Justice (2009): 29.
21. Snyder, Jack and Leslie Vinjamuri. "Trials and errors: principle and pragmatism in strategies of international justice". *International Security,* Vol. 28, No. 3 (2004); Lekhra Sriram, Chandra. "Justice as peace? Liberal peacebuilding and strategies of transitional justice". *Global Society,* Vol. 21, No. 4 (2007).

agreements negotiated in each situation had a much more important effect on human rights and justice in these two countries than the justice provisions. The power-sharing deals enabled elites to entrench their power within the political and security institutions, and then fundamentally undermine justice efforts in the implementation phase.[22]

The possible effects of justice provisions on 'peace' are often considered, but rarely those of peace on justice. Justice activists and mediators need to take a more comprehensive approach to designing and analysing peace deals. Particular attention should be paid to the justice and security sectors. If security arrangements, for example, entrench impunity within the security and justice sectors, no justice initiative, national or international, judicial or non-judicial, is likely to succeed. Such arrangements may also contain the seeds for prolonging conflict until it erupts into violence at a later stage.

Jack Snyder and Leslie Vinjamuri have argued that offering (potential) spoilers amnesty should not be ruled out if it means that institutional reform can be introduced to strengthen justice norms in the aftermath of conflict.[23] It is difficult to imagine amnesties, at least for the most serious crimes, returning to use in the current climate. Yet at the same time, the current hope seems to be that in the absence of an ICC warrant, or (rarely) a national warrant, human rights violators will turn over a new leaf at the end of conflict. There are too few attempts to regulate the behaviour of (previously) abusive leaders once in power. Between ICC indictments and amnesty, there is fertile ground in which to uncover creative ways to hold leaders responsible for supporting justice norms in their post-conflict society; and, when necessary, to hold them accountable if they fail to do so.

22. Obel Hansen, Thomas. "Kenya's power-sharing arrangement and its implications for transitional justice"; Davis, Laura. "Power shared and justice shelved: the Democratic Republic of Congo". Both in *International Journal of Human Rights*, Vol. 17, No. 2 (2013).

23. Snyder, Jack and Leslie Vinjamuri. "Trials and errors: principle and pragmatism in strategies of international justice". *International Security,* Vol. 28, No. 3 (2004): 44.

Getting to the point of inclusion: seven myths standing in the way of women waging peace

Alice Wairimu Nderitu and Jacqueline O'Neill

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In early 2008, Kenyan streets were filled with people wielding machetes wet with the blood of their political rivals and those ethnically different from them. Kofi Annan sat with Kenyan leaders, negotiating peace as death and destruction raged around them.

On the outskirts of Nairobi, the Kibera slum was one of the theatres of this seemingly endless violence – until a 15-year-old girl was killed. She died with people around her, including a photographer documenting her last moments. Among those watching was the previously unknown Jane Anyango, who was galvanized into action by the girl's death. She moved from door to door, mobilising women in protest. In less than two hours, Ms Anyango and a friend had 200 women marching, chanting for the fighting to end and pulling men they knew off the streets.

The nation was divided on tribal, political, and religious grounds, 'yet, when we called for women to join us, nobody cared which [community] we were from', Ms Anyango says.

Her group took the name Kibera Women for Peace and Fairness and grew to include a large number of women working towards a common goal: convincing male relatives to stay clear of violence. The group sent a message to the wives of the Prime Minister and the President, 'talk to your husbands to end the conflict; we got our men off the streets'. The women created inter-ethnic platforms and, during the 2013 elections, Ms Anyango and her colleagues patrolled Kibera in pairs. If they saw a man demonstrating, they called his wife, aunt, mother, girlfriend, or daughter.

> *At best, mediation is messy and complicated. But meaningfully involving women at all stages is by no means impossible, and by all means worth it.*

No security force could have used these tactics; no political party could have had quite the same effect. The women of Kibera took charge of the peace and security agenda, bridging ethnic divides that men still find hard to negotiate.

The challenging search for authentic voices

In our experience, the vast majority of mediators support the inclusion of women and the protection of their rights. They recognise that talks are less democratic if half of the population is not represented. Importantly, many have seen firsthand the influential contributions to peacebuilding that women like Jane Anyango make when they change the dynamic within a community – or a country.

But mediators don't want to be in the lonely, and generally ineffective, position of being the sole voice calling for expanded participation, particularly when it

seems the culturally 'inappropriate' thing to do. Above all, they want the violence to stop and will do whatever they can to end fighting.

It may be tempting, then, to put aside the framing of inclusive negotiations for fear that the process may thus become too complicated and fraught with risk. 'If I'm seen as favouring some women over others, won't that jeopardise my impartiality? I'm lucky to get the parties to the talks; how can I push them even further? How do I know which women to contact? Will I be seen as perpetuating a Western notion in a context where it is not culturally appropriate?'

As the nature of conflict changes, the job of the mediator has become more complex. Violence is diversifying, with a growing number of state and non-state actors, and decreasing clarity about which constituencies each represents. Lines between civil and armed groups are sometimes blurred, and long-standing local disputes have been awakened during national revolutions. Transnational crime networks operate with stunning sophistication and insurgents can get instructions and materials to build bombs from the internet. Our global culture of instant information is also dramatically changing the dynamics of mediation. Billions of people now have access to the levelling power of social media. Lead negotiators have Twitter accounts while university students mobilise hundreds of thousands through Facebook.

In an ever-crowded space, mediators need access to representative voices with authentic constituencies. They need to engage with those who have a stake in lasting peace and the corresponding courage to build it. Ultimately, they need more women in more peace processes.

Our goal in writing this paper is to equip mediators with examples and to expose several myths that, if left unchallenged, can prevent peacemakers from doing their best work.

At best, mediation is messy and complicated. But meaningfully involving women at all stages is by no means impossible, and by all means worth it.

MYTH 1: It is hard enough to get parties to participate – introducing new actors will destabilise already precarious processes

Research shows the opposite to be true: while never discounting the challenges of dealing with a more diverse set of actors, multiple studies have found that involving civil society – including women – has resulted in greater stability in societies over the longer term. Most recently, an examination of 83 peace agreements in 40 countries from 1989 to 2004 found that the inclusion of civil society actors in a settlement increased the durability of peace, particularly in non-democratic societies. Peace agreements were 60% less likely to fail when both civil society actors and political parties participated in the process. Importantly, there was nothing in the study suggesting that the inclusion of civil society has negative implications for the durability of peace.[1]

It appears that a growing number of major national and international negotiations now result in framework or transitional arrangements (where, normally, parties agree only on principles and an agenda for negotiating substantive issues), as opposed to comprehensive peace agreements. It may seem reasonable to argue that, in these more limited arrangements, inclusion is not as critical – that it is most important and appropriate to include additional, diverse perspectives in subsequent stages. For three primary reasons, however, this does not hold true.

> *"Multiple studies have found that involving civil society – including women – has resulted in greater stability in societies over the longer term."*

Firstly, the exclusion of peaceful civil society actors reinforces negative incentives: if you want a seat at the table, bear arms. As respected Mozambican leader and former South African and Mozambican First Lady Graça Machel notes, 'When you give prominence to the warring parties at the expense of consulting and

1. Nilsson, Désirée. "Anchoring the Peace: Civil Society Actors in Peace Accords and Durable Peace". *International Interactions: Empirical and Theoretical Research in International Relations*, Vol. 38, No. 2 (2012).

involving the majority of people, you are giving them rights to decide on behalf of the others, in essence rewarding them for having taken up arms'.[2]

Secondly, transitional and framework agreements lay important foundations for long-term stabilisation. The exclusion of key stakeholders from this level of talks not only jeopardises the sustainability of an agreement, but condemns them to struggle even harder for representation in future rounds of negotiations. Advocating for a quota, funding, or even recognition becomes more difficult after agreements have been signed and programmes designed.

Thirdly, while a framework or transitional agreement may be essential to ending hostilities, it is not tantamount to creating lasting peace. For stability to endure, particularly in civil war situations, underlying dynamics must be addressed right away through processes informed by those with the greatest understanding of those dynamics and a genuine stake in their resolution.

The mediator's bottom line: Though often challenging, the benefits of increasing the perspectives included in negotiations – including those leading to framework or transitional agreements – generally outweigh the risks.

MYTH 2: Women's perspectives can be brought in later – they're not useful in stopping the guns now

We are sympathetic to the argument that urgency is critical to negotiations, and that anyone who comes to the table had better be able to stop the fighting. Fortunately, very often, women can.

Around the world, women have been integral in getting parties to the negotiating table and in ensuring that, once there, they remain committed to the process. Fed up with the war in their countries, women from Guinea, Liberia and Sierra Leone joined forces in 1999. Facing three Presidents who had vowed to never talk to one another, they used unconventional tactics to compel them to attend negotiations – including threatening to lock the President of Guinea in a room until he did so.[3] In 2004, women from the region came together again to force a non violent resolution to stalled peace talks in Liberia.[4] For years, when talks faltered in Sri Lanka, a woman served as an impartial bridge between parties.[5] In India's Naga region, as the ceasefire wavered, women sustained it by mediating between national security forces, underground opposition forces, and a range of tribal factions and groups.[6] In Colombia in 2002, when the government broke off peace talks with the Revolutionary Armed Forces of Colombia and initiated an armed offensive, women's groups mobilised 40,000 people in protest.[7] Among the pastoral communities frequently in conflict in Kenya, conflict primarily stops because it is the women who settle local disputes and have the experience to know when the conflict parties have reached a mutually hurting stalemate. In Pakistan, women are working with families to dissuade young men from becoming suicide bombers.[8]

> *"The exclusion of peaceful civil society actors reinforces negative incentives: if you want a seat at the table, bear arms."*

There are many examples where women participate directly in negotiations – representing parties or as civil society contributors – and create dynamics that enable short and long-term progress. During negotiations on Darfur, for example, women 'raised previously neglected issues that all parties could agree on, such as food security; these issues effectively served as

2. Centre for Humanitarian Dialogue (HD). "Life as a peacemaker: a frank conversation with Said Djinnit, Graça Machel and Hassan Wirajuda", in *The Oslo Forum 2010: Views from Participants* (2010): 24.
3. Fleshman, Michael. "African Women Struggle for a Seat at the Peace Table". *Africa Renewal,* Vol. 16, No. 4 (2003).
4. *Pray the Devil Back to Hell* (2008). Produced by A. Disney. New York: Fork Films LLC.
5. Anderlini, Sanam. "Peace Negotiations and Agreements", in *Inclusive Security, Sustainable Peace: A Toolkit for Advocacy and Action*. Washington, DC: Hunt Alternatives Fund and International Alert (2004).
6. Manchanda, Rita. "Naga Women Making a Difference: Peace Building in Northeastern India", in *Women Waging Peace Policy Commission.* Washington, DC: Hunt Alternatives Fund (2005).
7. Rojas, Catalina, Sanam Anderlini and Camille Pampell Conaway. "In the Midst of War: Women's Contributions to Peace in Colombia", in *Women Waging Peace Policy Commission.* Washington, DC: Hunt Alternatives Fund (2004): 24.
8. Chatellier, Sarah and Shabana Fayyaz. *Women Moderating Extremism in Pakistan*. Washington, DC: The Institute for Inclusive Security (2012).

confidence-building measures'.[9] During Ugandan negotiations, observers from the United States found that women delegates 'greased the wheels', facilitating communication among the parties.[10] As Dr Ozonnia Ojielo who is the Coordinator, Conflict Prevention and Recovery at the UN Development Programme describes, 'Women help parties move away from the type of zero-sum thinking that consistently stalls negotiations'.[11]

Women also tend to broaden the set of issues addressed in negotiations beyond military action, power and wealth-sharing to address the underlying drivers of the conflict. In Guatemala, women ensured that talks addressed police power and civilian oversight of the security sector.[12] In Uganda, women insisted that talks between the Lord's Resistance Army and the government address long-term reintegration of combatants in communities, securing the provision of health care and education.[13]

The mediator's bottom line: Including women is not simply the right thing to do; it is the smart thing to do. General Lazaro Sumbeiywo, a Kenyan envoy who served as chief mediator in Sudan, explains: 'what I have learned through experience is that a peace agreement without women participating at the highest level is a recipe for short-term, not long-term, solutions'.[14]

> *"Advocating for a quota, funding, or even recognition becomes more difficult after agreements have been signed."*

MYTH 3: Mediators have little authority to insist on greater inclusion of women

Discussions related to authority normally focus on the mediator's mandate, which can vary widely. What is consistent across negotiations, however, is that mediators represent organisations and that these organisations have standards and shared principles. While a mediator may be politically impartial, s/he is never impartial in terms of values.

Whether as a lead envoy, chair of a high-level panel or Special Representative of the Secretary-General, a mediator is expected to uphold the standards and principles of the institution s/he represents. A United Nations mediator is prevented, for example, from endorsing peace agreements that provide for amnesties for genocide, crimes against humanity, war crimes, or gross violations of human rights, including sexual and gender-based violence.[15]

Direction in terms of women's participation in negotiations is rarely as specific. But nearly every organisation has codified guidance that buttresses a mediator's pursuit of inclusion. In the UN (the entity that frequently issues mandates to mediators), the Security Council has passed numerous resolutions recognising women's agency in preventing and stopping war. The first one, UN Security Council Resolution 1325 (passed in 2000), stresses 'the importance of women's equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution'.[16] In 2003, the African Union adopted the Protocol on the Rights of Women in Africa, which calls on parties to 'take all appropriate measures to ensure the increased participation of women'.[17] The Organisation for Security and Cooperation in Europe, the Organization of American States, and many other bodies have similar guidance. Some 39 countries now also have national action plans affirming the principles of UNSCR 1325 and, in many cases, specifically requiring women's full participation in negotiation and mediation teams.

9. Thornton, Evelyn. *Negotiating Peace in Darfur: A Case for Including All Stakeholders* (unpublished paper, 2007).
10. Page, Michelle, Tobie Whitman and Cecilia Anderson. *Strategies for Policymakers: Bringing Women into Peace Negotiations.* Washington, DC: The Institute for Inclusive Security (2009).
11. Comments made by Dr Ozonnia Ojielo to Alice Nderitu, 21 April 2013, Nairobi, Kenya.
12. Page et al. (2009).
13. Page et al. (2009).
14. Statement made by General Lazaro Sumbeiywo to Alice Nderitu on 15 April 2013, Nairobi, Kenya.
15. UN Secretary-General. *UN Guidance for Effective Mediation*, Doc. A/66/811. New York: United Nations (2012).
16. UN Security Council. *Resolution 1325 on Women, Peace and Security*, Doc. S/RES/1325 (2000).
17. African Union. *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (2003).

Regardless of mandate, most mediators rightly contend that they have little ability to insist on virtually anything. Limitations apply to women's inclusion as much as to a range of other topics or conditions. To varying degrees, however, mediators have influence. They have the power to convene. By meeting regularly with women from civil society, they can send a powerful signal that those voices matter. Mediators and their teams can frame discussions, asking questions and eliciting information in a way that draws attention to how issues might differently impact on women, men, girls and boys. Mediators can persuade the parties that including women in delegations is in their interests (see Myth 4), and mediators have access to international actors such as contact groups, many of which themselves exert influence on the parties through funding, political recognition, and other forms of support.

Importantly, parties can hardly take seriously a male mediator's claims about the importance of women's perspectives if his team does not include female top advisers. As a Sudanese woman said to Jacqueline O'Neill after meeting an all-male, high-level UN delegation, 'Why should the men in our parties believe the UN when it says that women are important to the talks? They have access to the whole world, but didn't think even one woman was capable of being on their team?'

The mediator's bottom line: Mediators have a large and growing body of mandates, guidance, norms and established practices that compel them to ensure women's meaningful inclusion. Rightly, mediators will always need to use discretion to navigate messy realities and only they will know how far to push. 'Bulldozing' does not work, but creativity is often an option. A mediator may:

> *Around the world, women have been integral in getting parties to the negotiating table and in ensuring that, once there, they remain committed to the process.*

• Reference supportive UN Security Council resolutions, adopted organisational principles, and national legal frameworks.

• Offer parties positive incentives, such as additional places at the table for those who include a critical mass of women.

• Authorise the creation of a Gender Expert Support Team – a non-partisan, representative group of women (and potentially men) with expertise on specific issues, who serve as a technical resource for all. (Salim Ahmed Salim did this during the Darfur negotiations in 2007.[18])

• Urge respected independent bodies to lead consultations with women leaders and conduct a gendered analysis of key issues.[19]

• Ensure each member of the mediation team – male and female – receives quality, relevant, context-specific training on inclusion.

MYTH 4: Mediators lose valuable political capital by urging parties to include women

In some cases, parties can identify specific benefits which may result from including women in their delegations, or by having women contribute as civil society representatives. These benefits occur when women's participation supports broader objectives.

As an example, parties to negotiations frequently seek international legitimacy. When Jacqueline O'Neill once asked the leader of a Darfurian rebel movement why he had announced that his group would include 25% women negotiators, he replied, 'well, isn't that what all of you in the international community do?' He saw inclusion as a stepping stone towards global recognition – one of his core objectives.

Domestic approval is essential, particularly for movements seeking to transition into political parties. Numerous cases show how the inclusion of women can increase the perceived legitimacy of peace processes, and parties associated with them, by

18. Page et al. (2009): 10.

19. In 2010, the Assessment and Evaluation Commission, an independent body that monitors and supports the implementation of Sudan's Comprehensive Peace Agreement, commissioned consultations with diverse Sudanese and South Sudanese women.

local stakeholders. Many people recognise that these stakeholders are also voters, at least 50% of whom are normally women. In the Philippines, public perception of the legitimacy of negotiations improved substantially when women were appointed as four of the five official mediators.[20]

Parties wanting to implement agreements also benefit tremendously when women subsequently generate support for them in communities. Referring to negotiations that led to Sudan's Comprehensive Peace Agreement in 2005, Dr Priscilla Nyanyang Joseph Kuch, Deputy Minister of Gender, Child and Social Welfare for South Sudan explained, 'our leaders knew they needed us [women] to sell the agreements back at home. We took it to villages and explained what self-determination meant and how eventually we would be able to vote on whether or not to separate. Women later made up the majority of voters (52%) in the referendum'.[21]

The mediator's bottom line: If accused of disrespecting women and their rights, most people will become defensive. But when presented with the potentially positive effects of women's contributions, parties may recognise direct benefits. They may also perceive a mediator who identifies women's strengths and influence as more culturally sensitive than one who implies that women are passive victims. By framing the inclusion of women to parties as a means to advance everyone's interests, a mediator has the opportunity to demonstrate insight and actually strengthen relationships.

MYTH 5: 'Women's issues' are discrete, separable topics

The insights and experiences that women bring to negotiations are essential to understanding and successfully addressing every topic on the table – including those most central to the conflict.

Women often do, see, and hear things differently from men, which leads them to have unique perspectives and priorities. The term 'women's issues' typically refers to these perspectives and priorities and the topics associated with some of them. But the term perpetuates the misconception that these topics are relevant only

> *"Women tend to broaden the set of issues addressed in negotiations to address the underlying drivers of the conflict."*

to other women and can be addressed in isolation. When mediating, Alice Nderitu often encounters a misperception that 'men speak for the tribe' while women speak only for other women and children.

In 2010, when asked for their perspectives on the topics being addressed in formal negotiations, women across Sudan and South Sudan surprised many facilitators. They spoke immediately about agreements related to petroleum, emphasising that any deal reached needed to address environmental regulation. Why? Because they see unregulated oil extraction and transportation polluting land, rivers and lakes. Since women are traditionally responsible for collecting water, pollution means they must travel further to find viable sources. The journey exposes them to attacks and sexual violence. Some are forced to relocate with their children – often separating families and destroying the social fabric. And, with women responsible for 80% of agricultural production, they are deeply concerned about food security.[22]

In Afghanistan, women are leading calls for a national process to engage those most affected by war in a dialogue on how to cultivate and sustain peace.[23] Libyan women are designing inclusive constitutional reform processes to ensure that women, minorities, and vulnerable groups have a voice in determining their country's future. In El Salvador, women negotiators effectively pressed for the inclusion of unarmed opposition supporters in beneficiary lists for land and other resources, preventing a potential crisis and a possible resumption of the conflict.[24]

20. De Langis, Theresa. *Across Conflict Lines: Women Mediating for Peace*, 12th Annual Colloquium Findings. Washington, DC: The Institute for Inclusive Security (2010).
21. Statement by Dr. Nyanyang Joseph Kuch to Jacqueline O'Neill, 19 April 2013, Washington, DC.
22. Jacqueline O'Neill co-facilitated consultations commissioned by Sudan's Assessment and Evaluation Commission in 2010.
23. Barsa, Michelle. "The Time Is Ripe for a National Dialogue on Reconciliation". *The Huffington Post* (12 December 2011).
24. Page et al. (2009): 2.

The mediator's bottom line: Where communities are involved, there is no such thing as 'women's issues'. The vast majority of topics women raise are security related. Many topics affect men and women differently, and neither sex can speak fully for the other.

MYTH 6: The inclusion of women is Western-driven and sometimes culturally inappropriate

Because men make up the majority of combatants, many assume that war is men's domain. But women play a wide range of roles during and after conflict: from combatant to peacebuilder, mediator to spoiler.

Overwhelmingly, women are powerful forces for preventing and ending war. In Somalia and Somaliland, women have served as peace envoys, known as 'ergo nabaded'. They consult with warring groups and promote reconciliation. Similarly, in Pashtun communities the traditional practice of 'nanawati' involves a woman participating in conflict resolution by approaching the home of an enemy family, knowing that family is culturally obligated to give her shelter. This gesture carried out by the woman then obligates the men of the disputing families to resolve their conflict.

The 'culture argument' is often used by people seeking to suppress others as a way of gaining or maintaining control. 'If women's exclusion from mediation related to peace and security were [merely] a cultural phenomenon – we would see significant variance globally [in women's involvement]', explains Sanam Naraghi Anderlini, former member of the UN's Mediation Standby Team and its first expert on gender and inclusion. 'The fact is that their exclusion is by and large universal – suggesting that the problem is not one of culture difference, but one of power. Those who have the power and those who seek it through the barrel of a gun, have no interest in being challenged or held accountable by members of their own societies – especially if they are strong women. Culture is an easy excuse for keeping them out'.[25]

> *"The vast majority of topics women raise are security related."*

Those pursuing this control will frequently presume a mediator does not know the history or reality of women's leadership. In every context, however, there are women who want a say in the decisions that affect their lives. Including their voices may require a culturally sensitive approach, but that is a matter of tactics, not values. Committed mediators discern the difference.

The mediator's bottom line: Learn the precedent. Mediators should come to negotiations armed with the truth about the history of women's leadership in that culture. There will never be a shortage of local women who know it and who are eager to share their rich backgrounds. Recall, too, that the international framework for women's inclusion, UN Security Council Resolution 1325, originated from men and women in the Global South – and from diplomats from Bangladesh, Namibia and Jamaica, not from Western diplomats in New York.[26]

MYTH 7: Peace agreements can, and should, be gender neutral

A gender-neutral peace agreement would apply equally to men and women who would be partners in designing, implementing and evaluating programmes. Unfortunately, the conditions for such an agreement do not yet exist.

Drawing on his experience of supporting negotiations to end two decades of conflict in Angola, Ambassador Donald Steinberg, currently Deputy Administrator of the US Agency for International Development, explains: 'A peace agreement that is "gender neutral" is, by definition, discriminatory against women and likely to fail'.[27] While originally proud that the Lusaka Agreement did not contain 'a single provision that discriminates against women',[28] Ambassador Steinberg quickly realised that the exclusion of women and gender considerations from the peace process and the resulting agreement not only 'silenced women's voices on the hard issues of war and peace, but it also meant that issues such

25. Statement submitted via email by Sanam Naraghi Anderlini to Jacqueline O'Neill, 22 April 2013.
26. Anderlini, Sanam. *Women Building Peace: What They Do, Why it Matters*. Boulder, CO: Lynne Rienner Publishers (2007).
27. Steinberg, Donald. "Failing to empower women peacebuilders: A cautionary tale from Angola". *PeaceWomen E-News* (25 April 2007).
28. Steinberg (25 April 2007).

> *Including women's voices may require a culturally sensitive approach, but that is a matter of tactics, not values.*

as internal displacement, sexual violence, abuses by government and rebel security forces, and the rebuilding of social services, such as maternal health care and girls' education, were given short shrift – or no shrift at all'.[29]

As a recent study by the Centre for Humanitarian Dialogue (HD) points out: 'Gender-neutral language can be one way to disguise exclusion, so it is preferable to use specifically inclusive terminology ("men and women of Aceh" rather than "people of Aceh", for example). There is a difference between clauses directly aimed at or about women (for example, addressing female victims of sexual and gender-based violence) and provisions which appear gender neutral, but whose consequences are actually gendered (for example, clauses affecting 'combatants', who may be men or women)'.[30]

The mediator's bottom line: The need for specificity in language is a matter of long-term sustainability. What alternatives can a mediator promote when facing resistance from parties unwilling to include women in negotiations or explicitly protect their rights in an agreement? A mediator might:

- Call attention to inaccurate references such as 'women and other minorities' and counsel parties against the consistent use of infantilising terms such as 'women and children'. (Women are adults and therefore possess agency; children are not legally responsible for their actions.)

- Encourage parties to agree on definitions of terms, such as 'the population', and ensure they cover men and women, boys and girls.

- Replace, as the HD Centre study suggests, the consistent use of male pronouns with inclusive terminology, such as (English-speakers use of) 's/he'.

- Looking ahead, support the creation of a mechanism to ensure, or track, funding for women's participation in the implementation of agreements and propose a quota for women in implementation and oversight bodies.

Conclusion

Daw Aung San Suu Kyi said at the 2012 Oslo Forum that 'unless our country becomes a more inclusive society, we won't have achieved a genuine transition'. Mediators of the Yemeni peace process said that there was an 'inclusion deficit', and that this deficit was the biggest driver of challenges to full implementation of the political agreement reached in November 2011. In the Forum's discussions on Syria, much attention focused on how a peace process must address the large numbers of young people and civil society groups who are driving resistance but are not party to talks. Participants heard that, in the Philippines, 'the concept of inclusion drove some of our most important successes'.

The topic resonates across the field of mediation because it is clear that, in the 21st century, ensuring that diverse communities are represented in peace negotiations is in the strategic interest of mediators. Mediators also have an opportunity to capitalise on women's potential for contributing to peace talks which has, all too frequently, been ignored or undervalued due, in large part, to misconceptions. Although the participation of women is but one component of inclusion, it is critical to ensuring the equity and efficacy of peace processes.

29. Steinberg (25 April 2007).
30. Buchanan, Cate, Adam Cooper, Cody Griggers et. al. *From clause to effect: including women's rights and gender in peace agreements*. Geneva: Centre for Humanitarian Dialogue (HD) (2012): 20.

Civil society and peace negotiations: why, whether and how they could be involved

Thania Paffenholz, Darren Kew and Anthony Wanis-St. John

2006

Citizen participation in political decision-making is one of the pillars of democracy. However, the involvement of civil society in Track I peace negotiations is still shunned by negotiators because of the difficulties of fostering cooperation when large numbers of parties are at the negotiation table. In practice there is a tendency to limit involvement at the peace table to only the armed parties. On the other hand, participation of civil society gives peace negotiations, and thus the entire peace process, more legitimacy and has contributed in many cases to the sustainability of the peace agreement, as recent empirical research suggests.

The objective of this brief policy paper is to provide answers to the question of why, whether and how civil society could be involved in peace negotiations. We will also present and analyze different options to involve civil society into peace negotiations, including the advantages and disadvantages of each approach. At the end of the text we will also present a short questionnaire for mediators' decision-making on the issue.

Understanding civil society

Civil society is typically defined as the vast array of public-oriented associations that are not formal parts of the governing institutions of the state: everything from community associations to religious institutions, trade unions, nongovernmental organizations (such as human rights groups, relief organizations, development organizations, and conflict resolution groups), business associations, and professional associations such as the Bar or accountants' associations. Civil society groups must also be civically minded, and it is important to note that civil society is much more than NGOs, even though NGOs are the main interlocutors for international cooperation.

> *"The involvement of civil society in Track I peace negotiations is still shunned by negotiators because of the difficulties of fostering cooperation when large numbers of parties are at the negotiation table."*

In order to involve civil society into peace negotiations, it is therefore important to understand who belongs to civil society in a specific case and how civil society structures have been changed due to the armed conflict as a means of understanding who eventually could and should be involved, and also depending on the history of civil society in a particular country.

Civil society involvement in peace negotiations: assessing the linkage to sustained peace and thinking about who to invite

A growing body of research indicates that, although excluding civil society groups may be 'tidy' for peace

negotiations that are already complex enough, the absence of their interests at the negotiating table can prove fatal to the negotiation of the peace agreement and its implementation during the post-conflict peacebuilding phase.[1] From Oslo to Arusha, the focus on elite interests in peace negotiations leaves the populace at large without perceived stakes in the agreed peacebuilding frameworks, undermining the ability of governments and transitional authorities to reach a sustainable peace. In fact, a recent study found strong evidence that peace negotiations characterized by high civil society involvement have enjoyed sustained peace in the peacebuilding phase, while most negotiations with low civil society involvement resulted in resumed warfare.[2] Some authors warn that civil society has its own contradictions and problems, but overall we see that involving these groups can help to bring greater public representation into negotiations, and the absence of civil society groups from the peace process significantly undermines the chances that an agreement will lead to sustained peace.[3]

> *"Participation of civil society gives peace negotiations more legitimacy and has contributed to the sustainability of the peace agreement."*

But should civil society groups have seats at the negotiation table? Research findings indicate that the more democratic and broadly representative the parties are, the less civil society needs a direct seat at the table. In South Africa, for instance, both the apartheid government and the ANC had wide credibility with the factions of the country they sought to represent, and held the democratically elected mandates of those populations, such that a civil society seat at the table was not necessary. They also negotiated within an open political environment with strong media presence and political cultures of regular consultation with civil society groups that were on their respective sides.

Consequently, this suggests that mediators and international intervenors need to utilize a democratic scale in deciding to what extent they will invite civil society groups to have a seat at the table, such that the less democratic the Track I parties, the more civil society participation should be sought. Undemocratic Track I parties may resist the inclusion of civil society actors in peace negotiations, and civil society groups in those cases will likely be dependent upon the leverage of the mediator(s) to gain access to the talks.

Practical options for civil society engagement with peace negotiations

In the following section we briefly present and analyze different options to involve civil society into peace negotiations. The options principally vary according to the degree of civil society's involvement and proximity to the negotiation table and are:

- inviting civil society representatives directly to the negotiation table;
- installing a parallel civil society forum with a consultative mandate;
- involving civil society through effective communication channels;
- negotiating with civil society only when Track I negotiations are stalled.

Civil society at the negotiation table

The most direct form of participation is having civil society representatives at the table. If, as recommended above, mediators assess that Track I parties are not sufficiently democratic, then they should consider several elements in involving civil society groups:

Who to involve? Several characteristics of civil society groups are important in choosing which groups are to sit at the table:

- Representation: widely representative groups are strong potential partners to join a negotiation. These

1. Lederach, John Paul. *Building Peace. Sustainable Reconciliation in Divided Societies.* Washington, DC: US Institute of Peace Press (1997); and Paffenholz, Thania. "Civil Society functions in peacebuilding and options for coordination with Track I conflict management during negotiations: Theoretical considerations and a short analysis of civil society involvement during negotiations in Guatemala and Afghanistan". Paper presented at the 47th Annual Convention of the International Studies Association, San Diego (23 March 2006).
2. Wanis-St. John, Anthony and Darren Kew. "The missing link? Civil Society, Peace Negotiations: Contributions to Sustained Peace". Paper presented at the 47th Annual Convention of the International Studies Association, San Diego (23 March 2006).
3. Berman, Sheri. "Civil Society and the Collapse of the Weimar Republic". *World Politics*, Vol. 49, No. 3 (1997). Carothers, Tom. "Civil Society: Think Again". *Foreign Policy* (Winter 1999-2000).

include trade unions, business associations, student unions, and the like, but also be representatives of civil society coalitions. The democratic structures of these groups foster wide membership participation and promote the strong inculcation of democratic political culture.

• Needed expertise: other groups are good candidates to join mediation because they can offer specific expertise that could help reach agreement and improve the outcome. Such groups include conflict resolution NGOs or humanitarian organizations, or business associations with knowledge needed to rebuild the economy.

• Potential spoilers: civil society groups that could have a significant role in undermining an agreement or fomenting instability in the peacebuilding phase should be considered for inclusion in the mediation.

• Potential to create political parties: if rebel movements, government forces, and other combatants are to disarm and join the political process by transforming into political parties, they are not likely to represent the larger populace or be inclined toward needed social change. Mediators could invite participation of effective coalitions of civil society groups to augment the new political parties, or to create additional parties to offer the public more alternatives, and to facilitate consensus and representation. Examples of civil society direct participation in negotiations vary. Negotiations in 2003 to end the resumed warfare in Liberia included important representation from Liberian NGOs and community associations, producing a successful democratic transition. The 2003 agreement stands in stark contrast with the 1996 negotiations to end the Liberian civil war, which were dominated by the political factions and militias and resulted in renewed warfare and regional instability under the Charles Taylor-led government. After the collapse of the first peace agreement in the Democratic Republic of Congo (DRC) in 2000, UN mediators invited a range of Congolese civil society groups to join the negotiations over a new framework, including trade unions and human rights groups.

Advantages of direct civil society participation

• Increased public "buy-in" to the peace process: civil society groups can bring greater public involvement in the process, which improves its legitimacy, accountability, and the public's investment in the process, such that it will likely lend greater support to making it work. In short, civil society groups help to create a new social contract through the peace process.

• Checking and balancing Track I actors: civil society groups can serve as a counterweight to the interests of political elites at the table, and help to ensure that broader public interests are negotiated. In addition, potential spoilers could be moderated or better engaged with the presence of some civil society groups.

• Specialization and expertise: some groups can offer specific expertise that could help reach agreement and improve the outcome.

• Local knowledge: local knowledge and deep contextual understanding of barriers and opportunities to making peace at the local level enable civil society groups to have an impact through creating or supporting bottom-up processes and through engendering societal ownership of the peace agreement.

• Richer set of interests: more accountable, representative players at the negotiating table provide mediators with a greater set of interests from which to create value and develop innovative, comprehensive solutions to stuck negotiations.

• More effective public communication: civil society groups that are party to an agreement can also help to explain it more effectively to their constituents than Track I actors, and can engage their assistance in implementation.

• Healing societal divisions: civil society groups can surface key social issues necessary for broken societies to rebuild. Moreover, democratically structured civil society groups can help to bring together disparate social cleavages within their organizations to negotiate new understandings and to teach new ways of interacting with each other. Civil society can be the 'laboratories' of peace programming that can spread new social norms throughout post-war communities.

> *"Civil society groups help to create a new social contract through the peace process."*

Disadvantages of giving civil society a seat at the table

• Noise: civil society groups present at the table could increase the complexity of a mediation to the point that they could reduce the possibility of reaching an agreement. This complexity could result from sheer

numbers, or from the content of demands and material introduced by the groups into the mediation.

• Lack of coordination: civil society groups could create implementation problems if they are sufficiently disorganized and/or hostile or competitive with one another and with the Track I parties.

• Lack of expertise and preparation: civil society groups may be unsophisticated negotiators, sidetracking the mediation or forcing the mediator to spend more time coaching the parties.

• Uncivil society: not all organizations are well-intentioned, and some could be potential spoilers or fronts for hostile elements of the political elite.

Managing the disadvantages

Most international mediators are no strangers to complexity, which is the root of most of the disadvantages of having civil society groups at the table. Large group mediation tactics and problem solving workshops have much to offer in this regard. In addition, mediators could break the process into sub-groups working on key issues, with relevant civil society groups focusing on issues of most relevance to their constituencies. Recent peace talks in Nigeria's Ogoni region, for instance, moved from plenary sessions to working groups, with unions and development NGOs tasked with negotiating development plans with the government, conflict resolution groups working with the military on security issues, and so on, whose recommendations the plenary would then debate as a whole thereafter.

Convincing the Track I parties to include civil society

When Track I parties have refused to seat civil society groups at peace talks, mediators have usually had to use their leverage to bring them into the negotiations. Mediators can list civil society participation as a condition for the mediator's involvement, or they can try to negotiate this entry with the parties prior to or during the talks themselves. Parties often do not have a general objection to civil society involvement per se, but instead balk at specific groups they see as enemies or out of their control. One solution is to budget a specific number of civil society invitations for each Track I party to name, and then allow the mediator to invite a number of (local) groups as well, which can then be used to include key organizations that can help to obtain a more sustainable agreement.

Parallel civil society forums

In order to overcome the dilemma of having too many people at the negotiation table while still giving the negotiation process more legitimacy and sustainability, the creation of a parallel civil society forum seems to be an interesting alternative: parallel to the official Track I negotiations an official representative civil society body is created, with a consultative mandate. The civil society representatives discuss the same agenda as the Track I representatives or can even add to the negotiation agenda.

> *"Civil society groups can surface key social issues necessary for broken societies to rebuild."*

Practically, the following issues need to be considered:

• Representation: the parallel civil society forum is a fairly representative body, perhaps even consisting of elected representatives of civil society at large.

• Timing and sequencing: the sessions of the forum should best take place prior to corresponding Track I negotiation rounds. However, it is also possible to have them in parallel (see examples below), depending on the specific negotiation process.

• Mandate of the forum: prior agreement on the form in which it will exercise leverage over the Track I process is needed. This can range from more consultative to more binding.

• Procedures: the functioning of the forum needs to be worked out prior to its installation (see examples below).

• Coordination and communication: it is important to agree on official coordination mechanisms between the civil society body and the Track I negotiations. Communication with the public needs to be strategic and integral to the forum. Depending on the specific case, it is probably best to have a forum that permits two way communication between tracks: not only can the forum provide inputs to Track I negotiators, but these can also call upon the forum to build on public pressure for peace negotiations in case they are stalled.

An official parallel civil society forum was in place in Guatemala during the peace negotiations from January 1994 to December 1996. There had been a number of conditions conducive to the establishment of a parallel civil society forum (ASC): first, civil society exerted a

> *Parties often do not have a general objection to civil society involvement per se, but instead balk at specific groups they see as enemies or out of their control.*

great deal of pressure over years to be heard and have an impact. Second, civil society managed to get organized in an effective way. Third the guerrilla group in Guatemala, the URNG, hoped to strengthen itself by gaining political support from civil society. Fourth, all parties including the mediators hoped for more legitimacy by involving civil society.

Another example comes from the Afghanistan negotiations of 2001. The reason for establishing a civil society forum in parallel with the official negotiation process was to give the process more legitimacy. In contrast with the Guatemala case, civil society involvement did not come from within Afghanistan but was initiated externally by the UN. Two think tanks (one Swiss and one German) were asked to facilitate the process in which approximately 150 civil society representatives from diaspora groups and internal Afghan groups were invited. The influence on the official process was limited. Nevertheless it put pressure on the official parties to come to agreement and the influence of civil society on the implementation of the Afghanistan peace agreement was much higher than for the Guatemala case.

Parallel civil society forums have a variety of advantages:
- They can avoid the problem of multiplying the number of actors at the main negotiation table and the consequences thereof;
- Enhance the legitimacy of the peace process through representation and participation;
- Enhance sustainability of the peace agreement by increasing the buy-in of civil society at large;
- Facilitate the consideration of difficult issues on the official negotiation agenda that the official negotiators may wish to avoid;
- Provide a forum for civil society groups to practice democratic procedures;
- Provide additional bargaining power for negotiators when their negotiation positions are aligned with civil society demands;
- Provide an alternative channel of negotiations in case Track I gets stalled in combination with public pressure for peace negotiations (discussed as a separate option below);
- Provide subject-matter expertise from civil society to principal negotiators;
- Avoid 'reactive devaluation' problems in which principle negotiators tend to discount any concession or proposals made 'by the other side'.

Nevertheless, there are concerns about the parallel forum for civil society participation. They can also:
- Be hijacked by elite civil society groups that seek to dominate the process to the exclusion of others;
- Damage legitimacy in case the process is not sufficiently representative of the population;
- Be ignored, sidelined or dismissed by principal negotiators;
- Be co-opted by principal negotiators who use civil society to promote their own narrower negotiation agendas that do not necessarily serve social needs;
- Be inefficient in their elaboration of shared concerns and agreed-upon negotiating positions and interests;
- Fail to attain the desired unity and organization necessary for effectively influencing the Track I negotiations;
- Be subject to 'divide and conquer' strategies of the principal parties;
- Fail to maintain unity and engagement in the implementation phases of peacebuilding.

For example, during the Afghanistan negotiations the UN mediators tried several times to influence the agenda of the civil society forum's discussions in order to serve directly the purpose of the Track I negotiations, which could have been a danger to the legitimacy of the entire process. Moreover, the civil society forum almost failed to produce any recommendations for the Track I negotiations as the timeframe for the discussions was far too short. It is also of note that the civil society groups were as divided as the Track I conflict parties.

Participation through effective communication channels

The most basic level of civil society participation in peace negotiations when they are not present at or parallel to the table is by means of communication with the Track I negotiators. By this we refer to communication in both

directions: from principal negotiators to civil society and from civil society back to negotiators. It is comparatively easy for principal negotiators and their political leaders to communicate to the public. However, to open a channel from the public to the negotiators is more difficult. The main objective – from the negotiators' perspective – is to gain more legitimacy for the process in involving the public. While this option is rarely exercised, it can have a great deal of value, especially if implemented early on in a negotiation process when public opinion may need to be influenced in favour of a turn away from conflict to cooperation.

Possible options for communicating from the negotiation table to the public:

- Creation of a "Peace Secretariat" through which negotiators communicate agendas, results, shared positions and common approaches through media work (homepages, press conferences, etc.);
- Holding joint press conferences of the conflict parties or the parties with the negotiators/mediators;
- Sending in teams of 'barefoot' communicators to the field in order to inform people in remote areas in order to build support for peaceful resolution of conflict.

Possible options for communicating public opinions back to the table:

- Conducting public opinion polls (official or private, partisan or joint);
- Official or non-official discussion forums;
- Providing interactive communication spaces (webpages, workshops, etc..);
- Referendums regarding specific issues.

At various phases of the peace negotiations between Israel and Palestine the two parties would occasionally make use of communication strategies. Most of these have been from the negotiators to the public and often came too late in the process to influence public opinion. Had they been timed differently, the results may have been otherwise. During the DRC's peace negotiations in 2003 the negotiators created a website which informed the public and all interested parties about the important issues with regard to the negotiations. Another form of communication to the public is through radio broadcasts such as Radio Okapi in the DRC. It is however important that such broadcasts are perceived as neutral sources of information.

> *"It is not whether or not to involve civil society, but how."*

Some advantages of communication strategies for civil society participation include:

- The portion of the population that is ambivalent or opposed to peaceful resolution of conflict may be persuaded that peace is desirable;
- Negotiators strengthen their peacemaking mandate as the public integrates the pro-peace message;
- The innovative use of combinations of media channels (web, television, radio, and print) may have broader reach than only one alone;
- Civil society gains experience measuring public opinion and influencing it.

Some disadvantages of communication strategies include:

- Communication from public to negotiations is difficult to organize and time consuming;
- The impact of civil society preferences may be reduced given the non-binding nature of communication strategies;
- Communications strategies may be used by 'uncivil' society – those opposed to peaceful resolution;
- Delicate elite consensus and concessions may be undone by strong civil society preferences, thereby weakening an agreement or progress toward it;
- The public may perceive real differences between elite communications and the realities on the ground (as in the Palestinian-Israeli case) such that they lose confidence in negotiations and conflict resolution;
- Negotiators who opt to 'spoil' peace processes may make use of the same mechanisms to strengthen their anti-peace mandate.

Civil society negotiations when Track I negotiations are stalled

Track I peace negotiations can stall temporarily. When this happens, civil society can pick up where official negotiators left off, and even produce draft agreements, position papers and other outputs that official negotiators may use when their negotiations are resumed. The Geneva Accords between the Palestine Liberation Organization (PLO) and Israel may be an example of such a civil society negotiation since none of the negotiators was in a position to officially commit their leadership, since the Israelis were the party out of power and the Palestinians were not official PLO

> *If civil society participation at the table is not feasible, then a parallel civil society forum in combination with an effective communication policy could be an alternative model.*

negotiators, and the process included academics and other content experts.

Several advantages can emerge from this substitute process, including:
• It is better than no process at all;
• It creates entry points for Track I negotiations if and when they restart;
• It may be closer to public interests since few or no officials are involved, assuming that the civil society groups are themselves fairly representative of key constituencies.

At the same time, important disadvantages should be noted, including:
• Such negotiations lack legitimacy and cannot commit the principal parties;
• They are too easily dismissed and denied by official decision-makers and negotiators;
• Anti-peace process parties may more easily dismiss and denounce such civil society initiatives.

Conclusions

This brief study has presented a number of options for greater involvement of civil society in peace processes, as well as the advantages and disadvantages of such a role.

There is empirical evidence that the involvement of civil society into peace negotiations makes agreements more sustainable. Consequently, it is not whether or not to involve civil society, but how. In particular mediators must address the core dilemma of having too many people at the table.

It is necessary to analyze each peace negotiation and choose a suitable solution to fit the process. If civil society participation at the table is not feasible, then a parallel civil society forum in combination with an effective communication policy could be an alternative model.

It is necessary to prepare the ground for such a forum to be implemented prior to the start of the negotiations, so as to arrange for it to be an integrative part of the negotiations.

A negotiator's questionnaire

Clarifying whether civil society should be involved
• How democratic are the conflict parties?
• How legitimate and representative is the process?
• Has there been a tradition of civil society in the country?
• Has civil society changed due to the conflict situation?
• What are the main important representative groups to be involved? Are there representative bodies?

What form of involvement?
• Direct seat at the table for civil society groups
– when Track I parties are undemocratic and/or do not represent significant sectors of society and
– the situation is suitable for enlarging the number of participants at the table.
• Parallel forum for civil society groups
– when Track I parties are undemocratic and/or do not represent significant sectors of society but also in case of fairly but not sufficient representative Track I actors and
– a situation that is not suitable for direct involvement at the table.
• Public communication strategy to be combined with all forms of involvement.
• Civil society without Track I actors in case of stalled negotiations.

Whom to involve?
Choose civil society groups based on:
• Representation: widely representative groups;
• Needed expertise: groups with specific expertise that could help reach agreement and improve the outcome;
• Potential spoilers: civil society groups that could have a significant role in undermining an agreement or fomenting instability in the peacebuilding phase;
• Potential to create political parties: coalitions of groups that could form augmenting or alternative political parties to the Track I parties.

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Gender sensitivity: nicety or necessity in peace process management?

Antonia Potter Prentice

2008

The phrase that dare not speak its name

The phrase 'gender sensitivity' is perhaps an unfortunate piece of jargon, but it is a convenient shorthand since a better, simpler and less loaded phrase does not yet present itself. As most people know, but many still do not fully grasp, 'sex' refers to biological differences, while 'gender' describes the characteristics that a society or culture defines as masculine or feminine. So in one sense, being sensitive to gender is not a matter of nicety or manners, but very much correlated with being sensitive to culture. It will help an analyst to understand where power lies and how it is operated, how things get done, or indeed prevented, in particular cultures.

Gender relations may not be intuitive but need to be learned by observation of and interaction with a culture. Further to that, women and gender are not synonymous any more than women are naturally more gender-sensitive than men. The agenda of gender issues (across subjects and sectors) is still so largely driven by women because their participation in most arenas has been so unequal for so long that they are simply more motivated to be gender-sensitive. However, this is changing as more men recognise both the value of paying attention to gender and equality, and the fact that this is not an exercise that exacts unbearable costs.

> *"Being aware of gender can open up opportunities and strengthen mediation's already strong interest in good intelligence."*

A practical approach to sensitising peace processes to gender

This paper offers examples of how issues in peace processes can be treated in a gender- sensitive manner, an exercise that is surprisingly simple yet can yield rich analytical results. Being aware of gender in conflict mediation is not a silver bullet to cure the ills of peacemaking, but is an under-utilised practical tool that can open up opportunities and strengthen mediation's already strong interest in gathering and using good intelligence. This paper aims to explain: what gender sensitivity really means; what roles the currently excluded sex has played or could play in negotiations at and between different tracks; what substantive or process-enhancing inputs women can provide; and the mediation support functions they can play, such as relaying messages to and from broader communities, helping to contain spoiling elements in communities, keeping the political middle ground alive, helping to get buy-in for a process, and preventing the dreaded slide back into conflict.

The arguments in this paper are based principally on the practical experience of professionals currently or recently involved in the management of peace processes in Aceh, Kenya, Kosovo, Liberia, the Middle East, Nepal, Northern Ireland, the Sudan/Darfur and

Uganda,[1] together with some secondary academic research and analysis.[2] This paper does not offer a discussion about the need for equality or fulfilling the requirements of international norms and instruments relating to gender, women, peace and security, although these issues are clearly important[3]. Rather, the paper is an attempt to come at the subject from a fresh perspective that recognises the constraints under which peace process actors work. It aims to help them find their own ways to internalise and operationalise these norms from a pragmatic perspective, rather than ignoring them, reducing them to box-ticking exercises, or simply despairing about what they should actually do about them in practice.

Thus, the paper explores what peace process actors, including mediators, have done to make peace processes more sensitive to gender, what else might be done, and the benefits (and costs, if any) of such strategies. While it focuses principally on the agreement-crafting phase, the paper also touches on aspects of implementation in which gender sensitivity has played or could play a useful role.

Managing contributors and spoilers

Almost without exception, formal peace processes have strikingly low female presence, among both parties and mediators. Explanations for this, and suggestions on how to address it, have been rehearsed exhaustively elsewhere.[4] One exceptional case recently was in Kenya, where there was an eminent female adviser (Graça Machel), two lead female negotiators (Martha Karua, Minister of Justice and Constitutional Affairs, and Sally Kosgei, a former High Commissioner to the UK) and a female senior-level political adviser from the UN (Margaret Vogt) to the mediator Kofi Annan, as well as a female adviser from the Centre for Humanitarian Dialogue (Meredith Preston McGhie). In Nepal, by contrast, despite Maoist commitments to equality and the existence of at least a handful of politically powerful women, no females were seen around the table.

> *“Although women rarely make it to peace tables, there are very few places with absolutely no women in prominent roles in public and/or political life.”*

Although women rarely make it to peace tables, there are very few places with absolutely no women in prominent roles in public and/or political life. Several of the mediators interviewed for this paper argued strongly that mediation teams should invest more heavily in identifying both individual powerful women political actors, and the looser networks and groups of women which, again, tend to exist in almost all societies. Where possible, these women should have accessed positions of power directly and not through their identity as wife/mother/widow, the mediators felt. This status helps women to act as role models, and to make powerful cases on the issues they see as important, including but not limited to those affecting women, without vulnerability to accusations of illegitimacy. Just a few of the examples given include Nepal’s Pampha Bhusal, Sudan’s Anne Ito, and the Philippines’ Teresita ‘Ging’ Deles.[5]

Discussants felt that when such women did draw attention to issues specifically affecting women, their voices were immediately more powerful because these were not the only issues to which they referred. Examples of these issues include, perhaps inevitably, how to deal with sexual violence towards women both as an act of war and as an after-effect (as part

1. Hans Jacob Frydenlund, Ellen Margarethe Loej, Carla Koppell and Steve Krubiner (of the Hunt Alternatives Fund), John Paul Lederach, Ian Martin, Brendan McAllister, Meredith Preston McGhie, Jolynn Shoemaker, Johan Vibe, Sherrill Whittington. If I have misrepresented their ideas or arguments, the fault is entirely my own.
2. As readers will see, apart from discussions with practitioners, my key resource has been Sanam Naraghi Anderlini’s book, *Women Building Peace, What they Do, Why it Matters*. Boulder, CO: Lynne Rienner (2007). This book, which is concise, richly researched and well argued, is a quick must-read for anyone interested in this topic.
3. Key instruments include: UN Security Council Resolution 1325 on Women, Peace and Security (2000); the Beijing Declaration and Platform for Action (1995); the Convention on the Elimination of all forms of Discrimination against Women (1979).
4. To give a few examples, Potter Prentice, Antonia. *We the Women: Why Conflict Mediation is not Just a Job for Men*. Geneva: Centre for Humanitarian Dialogue (HD) (October 2005); Women in International Security (WIIS) is about to bring out a detailed report, *Women in Peace Operations: Increasing Leadership Opportunities*, with recommendations looking specifically at the UN; the UN’s Senior Leadership Appointments Section has initiatives on this, and various rosters are in operation (although the effectiveness of rosters is very much in question).
5. Pampha Bhusal: Maoist politician, member of Central Committee, Minister for Women, Culture and Social Affairs; Anne Ito: Deputy Secretary-General, Sudan People’s Liberation Movement (SPLM), Minister of State for Agriculture and Forestry; Ging Deles: former Presidential Advisor on the Peace Process.

of security, justice and community rehabilitation/ reintegration concerns), and looking at disarmament, demobilisation and reintegration (DDR) from the perspective not only of the men and women who are being demobilised but also of the communities which must reabsorb them. Both the communities and the demobilised individuals may have changed radically as a result of conflict and traditional roles may no longer be available, acceptable or possible for them. Another example is ensuring women's access to benefits that may ensue from any conflict settlement, including access to land (a major issue, as women's rights to own land are still circumscribed in many cultures), resettlement assistance, and access to employment and educational opportunities that are again frequently restricted by law and culture in some societies.[6]

It is also important to identify potentially powerful (even if not obviously visible) female spoilers. Women can organise aggressively around their identities as wives or mothers of fighters, or simply around their political or religious affiliation, to support their cause in the conflict, not to end it. A mediator in Northern Ireland recently recounted that some of the toughest negotiations he had over bitterly contentious issues like marching were with hard-line female community representatives. While on the one hand the renowned Mothers of the Plaza de Mayo in Argentina banded together in the 1980s to lobby against the junta who had 'disappeared' their offspring, militantly pro-conflict mothers and wives of Ugandan fighters mobilised against the peace talks in Juba in 2008. It is important to understand that while women may not be spoilers in the classic, visible sense (like being an armed group which threatens violence if not included at the table), by playing roles like this in society, they indeed qualify for the title, and thus for being encompassed and hopefully neutralised by a mediation effort.

A gendered view of post-conflict stability

Kosovo mediator Martti Ahtisaari thinks it is beyond argument that more women should be represented at peace tables and that the views of women, as different from those of men and regularly unrepresented, should be sought. This is part of creating a vision for a post-conflict society that is not hidebound by all the institutional and systemic problems that bred a conflict in the first place – a particular challenge when the agreement is usually made between an established government and an established rebel force, neither of which want to give up power. Women whose views have not been traditionally sought can play a part in letting fresh air into such a vision.

> *"A gendered perspective on what comprises stability might lead to a more nuanced concept of how that stability might be achieved."*

In addition, as Ahtisaari and several others argue, the paramount short-term concern of agreement brokers, to create a situation of stability in which real peace might begin to be built, is undermined by a perception of that stability which is overly driven by male definitions. How can a concept of stability be taken seriously if it does not include, for example, the prevention of systematic rape (as in the Democratic Republic of Congo or Darfur)? This is a form of violence which seriously destabilises society, and while it garners much media attention, it still does not command much political space. A gendered perspective on what comprises stability might lead to a more nuanced concept of how that stability might be achieved, even allowing for the fact that not every issue and every nuance can possibly be fitted into a single cessation of hostilities or peace agreement.

A different gender lens for looking at stability focuses on the situation of young men, proven to be the group most affected by armed violence both in and out of conflict. They may have been militarised during the conflict, and in most cases excluded from normal educational and employment opportunities during war. Experience has shown that such groups, lacking employment and meaningful focus, more often than not turn to gang

6. For a discussion on the transformative potential of conflict and post-conflict periods on gender relations and the emancipation of women, see Potter Prentice, Antonia. "Women and gender in civil wars', in *Contemporary Peacemaking.* John Darby and Roger MacGinty (eds). Basingstoke, New York: Palgrave Macmillan (2008).

activity, criminality and can be part of a slide back into conflict. Stopping that before it starts requires an understanding of how those young men came to be in that situation, how they perceive themselves in regard to their families and communities and what can practically be done through family, community, government, or international intervention to assist them to find a place in a peaceful society. That too, is a gendered analysis.

The problem Ahtisaari sees is lack of foresight, or, less kindly, laziness: if a mediation team and negotiation teams are pulled together in a hurry, and identifying critical women leaders or groups has not already been considered, then the chances are it won't be, or it will be done badly. But, he argues, what is to prevent research and reconnaissance in advance, in a period where dialogue seems imminent, about who might be the female leaders to include, or groups to consult? There is no argument anymore, he says, for saying there's not enough time. It is true that women may be organised in different ways (not only, for example, in accessible 'women's coalitions' but in looser networks based on any number of shared concerns), and thus slightly harder to track down; but there are very few places where for the price of a few intelligent questions, formal or informal women leaders or groups cannot be unearthed – alongside all sorts of other information which a mediation team might find valuable. For example, the women's health network in Nepal has provided a valuable means of communication with rural communities on issues ranging far beyond health concerns.

Fears expressed by other mediators that focusing on involving women might slow down a process to the extent that more civilians (in particular women and children) might be put at risk, can of course be applied to all arguments about broader inclusion. If the intelligence gathering and foresight suggested by Ahtisaari could be brought to bear, this narrowly utilitarian argument would have no significant purchase. It also belies the current thinking that the process is in many ways more important than the product.

> *"The greater problem is whether those women who do get access are organised, focused and trained to bring the right issues at the right time in a process."*

Identity confusion and men's gender identity in conflict

The discussion above on understanding stability hints at the interesting question of the identity issues faced by men and women in conflict, challenging them to establish, often publicly, whether their first loyalty is to their political party, ethnic group, religious group, or – though rarely in the case of men – gender group. An understanding of this is not just interesting psychology for the peace process actor, but critical to working out how people are to fit back into a society no longer in conflict.

Even, or perhaps especially, in highly developed and sophisticated situations like the Middle East, there can be confusion about whether women are lobbying to have women's concerns represented at talks, or to have their own organisation present. This is exemplified by the positions taken by the International Women's Commission for a Just and Sustainable Israeli– Palestinian Peace in their approach to the Annapolis talks[7]. A Northern Irish community mediator recently recounted, 'I've always thought of myself as an Irish Catholic woman, in that order, and I now realise that has defined how I have approached my life and my work'[8]. By contrast, the Northern Ireland Women's Coalition (NIWC) defines itself by nationality first, then gender, but not, of course, by religion. This identity conundrum is a problem of human nature, and of politics. Men share the same problems around ethnicity, religious and political affiliation, and nationality, but have not been burdened by the need to place their gender in that list as well, or, therefore, have their loyalty or competence questioned on those grounds.

The problem men face is that, while their gender does not necessarily bar them from having a say in peace negotiations (although all sorts of other political and socio-economic factors may do so), very few peace process actors give psychology the weight they

7. A body made up in principle of one-third Israeli women, one-third Palestinian women, and one-third high-level international women.
8. Workshop participant at European Mediation Conference, Belfast, April 2008.

accord to politics. There is a growing literature about masculine identities and linkages with conflict and violence, suggesting that men need more assistance in adapting from a war psychology to one of peace[9]. This is true for both leaders and others, especially given the roles that societies at war can ascribe to fighters and leaders. No one is surprised, while everyone is appalled, by the apparently inevitable spike in domestic violence in a post-conflict period. In today's Liberia, 10–15 rapes of women and children are reported every week, which is strongly suggestive of significantly higher actual rates. Peace brokers and implementers need to ensure space to care for the victims, to protect them and others from future attack, and to ensure accountability, but also to address the problems of identity confusion, shame, marginalisation, trauma or post-traumatic stress, misdirected pride and aggression which lead the perpetrators to act violently. And, as just demonstrated, a gender-sensitive analysis is required to spell this out.

> *"Women are often found acting as informal mediators within the talks."*

Walking the walk: how women contribute substantive issues

The greater problem here is whether those women who do get access to live negotiations are well organised, focused and trained or supported enough to bring the right issues to bear at the right time in a process. An individual closely engaged in the recent Kenya talks expressed frustration that, while the consultations with women's groups were extensive, prioritised precisely because of the presence of high-level women on the advisory panel, and while their early contributions were rich and valuable, the quality of their inputs declined at the later stage in the talks when detailed, technical inputs were required. At this point they seemed to focus disappointingly on the one goal of female presence at the talks. A recent study on justice issues in Liberia[10] suggested that the advocacy of some women's groups centred on keeping talks alive, without specific platform or purpose.

Much more valuable, discussants suggested, is specific, substantive advocacy on critical issues relevant to the peace process, and all of which have interesting and important gender dimensions. Regular female civilians, women ex-combatants, prisoners or ex-prisoners, victims of sexual violence, displaced and refugee women, and the single female-headed households, which are one of the most common and poignant products, especially of prolonged conflicts, have particular needs relating to DDR, land rights, employment opportunities and community reintegration, for example. All these groups also have a bearing on the nature of post-conflict security and police forces and other key institutions such as the judiciary. Traditionally such issues and institutions have not included women or their specific needs, or recognised that their ability to access their rights and services is frequently constrained by national law, culture and practice, especially in less developed, war-torn societies.

To expand on one example, that of DDR, as an illustration: women may have been combatants but not registered as such, and hence they are not eligible for DDR programmes. Even where female ex-combatants are registered at national level, experience in El Salvador (where 30% of the combatants were women), for example, has shown that they are still barred from accessing DDR-related benefits at local level because they are women. Women ex-combatants (or indeed camp residents) have different health needs, in particular reproductive and sexual health, and require separate provision for sanitation in, for example, cantonment situations. There is also the question of skill loss, where valuable technical and leadership skills gained during conflict are lost when women are required to return to solely traditional roles (which they themselves may not want). Additionally, it is not uncommon for male fighters to 'marry' several times during conflicts, creating legal and welfare issues about the status and support of multiple families.[11]

9. Barker, Gary. *Dying to be Men: Youth, Masculinity and Social Exclusion*. Abingdon, New York: Routledge (2005); Centre for Humanitarian Dialogue (HD). "Hitting the Target: Men and Guns". *Review Conference Policy Brief* (June 2006) (for The United Nations Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects).
10. Hayner, Priscilla. *Negotiating Peace in Liberia: Preserving the Possibility for Justice.* Geneva: Centre for Humanitarian Dialogue (HD) (2007). However, this paper also describes examples of women's ability to bring the reality – and urgency – of the conflict to peace-table delegates.
11. Anderlini, Sanam and Camille Conaway. http://www.huntalternatives.org/download/31_disarmament.pdf. The Initiative for Inclusive Security (www.huntalternatives.org) contains a rich collection of discussions of this kind on the gendered aspects of various key issues in peacemaking, such as conflict prevention and transformation, DDR, justice, and truth commissions.

Technical advocacy on these issues will be most useful if it can prioritise the extent to which details need to be included in a peace agreement, or can be developed under the implementation phase, to avoid over-freighting an agreement with exhaustive detail. While several of the mediators interviewed for this paper felt that there was still room for expressing some of the critical concerns of women in peace agreements themselves (over and above their normal inclusion in standard phrases relating to the care of vulnerable populations), no one argued that the detailed substance of an actual peace agreement outweighed the process itself in its importance for the eventual outcome.

There are, however, some positive examples of substantive advocacy on gendered issues. Northern Ireland is often cited as an example of a peace process that had at least some pretensions to gender sensitivity. This is not attributable, as it rarely is, to those in charge of the process as either mediators or principal parties, but essentially to politically active women themselves who famously formed a cross-party coalition (the NIWC) that was able to secure through election two delegate seats at the talks that led to the Good Friday Agreement. Their achievements, apart from mere survival in an atmosphere, which at the outset was clearly toxic in its male chauvinism, included demonstrating that cross-party unity on key peace issues was possible. The coalition also ensured the inclusion in the agreement of provisions related to critical issues for reconciliation and peacebuilding, such as integrated social service and education provision.

> *"The problem is that the women are too often talking only among themselves."*

In El Salvador, Liberia and Sri Lanka, for example, women delegations (and in the case of El Salvador women negotiators) have put forward specific recommendations on DDR, not only from the point of view of reintegrating female combatants, but from those of the now female-dominated communities to which former combatants return, and as relatives of former combatants.[12] These included, for example, ensuring that female ex-combatants had the same level of technical and financial assistance as did their male counterparts, although skills training may need to be adapted to suit gender norms and practicalities.

Benefits: laying the groundwork for longer-term transformation

If you agree that peace agreements should not give the detailed blueprint for a better future, but create the space for a country to make plans for itself during the implementation period, then one great achievement of almost all peace processes deserves to be singled out. This is the imposition of constitutional quotas for female political participation, most recently in Nepal and stretching back to Rwanda, which still has the highest percentage of female parliamentarians in the world (48%).[13] This is usually the result of pressure from women's groups backed up by support from the international community, and is one of the key arguments for how conflict provides opportunities for transforming gender relations, equality and female emancipation.

The piece of the picture currently missing is a study evaluating the record of those legislative bodies. What is the impact of the increased proportions of women on sustaining the peace? Do they need more technical capacity building to be able to participate to their fullest potential in these not necessarily friendly environments? Observers and mediators alike suggest that the international community has a tendency, having pushed for increased female political participation, to leave women politicians at the door of their parliament, to compete against or collaborate with others with, generally, much longer political experience.

Benefits: message-bearing potential

There are multiple examples of women's capacity for networking information, carrying messages and keeping channels of communication alive. Women are often found acting as informal mediators within the talks (leading in the Northern Irish case, as Monica McWilliams told the recent European Mediation Conference in Belfast, to

12. Anderlini and Conaway, Chapter 3 ("Getting to the Peace Table"), provides a series of other examples, including from lesser-studied conflicts such as in Nagaland.
13. International Parliamentary Union.

accusations at times that they were 'Sinn Fein in skirts'). In Uganda also, Betty Bigombe recalls using women in camps as intermediaries between factions, a role they can play with more ease than men, making them a valuable resource. Similarly in Somalia, women are able to move physically between clans (especially due to intermarriage) with a freedom that men do not have, and hence have often been used as first-line diplomats and message carriers.

In the Middle East, there is a long tradition of women trying to talk to 'the other' at the Track II level, which observers regard as vital for keeping the door open to the idea of dialogue being at least possible. Anderlini and Conaway quote the Executive Director of the Jerusalem-based Women's Legal Aid and Counselling Service: 'We want to explain to each other what it is like to live in Israel and Palestine, to develop transparent procedures so that any peace will be one between individuals and not politicians... If we leave it only to men we get Israeli generals and Palestinians who will not be defeated and there is no room to negotiate.'[14]

The problem is that, just as the intransigent Palestinian and the militant Israeli aren't listening to other realities, the women are too often talking only among themselves. At the Global Peace Initiative of Women conference held in Jaipur, India, in March 2008, 450 such women gathered and shared ideas for strategically influencing conflict resolution, much of which would ring very familiar to mediators: talking to the other to 'un-demonise' them, trying to help people identify their real problem. To give an example, Hala Al-Saraf, head of the Iraq Health Access Program, described how the Shiite/Sunni divide splitting Iraq is in large part a religious cover for underlying economic and political competition among those vying for power. She runs a conflict-resolution programme for widows of husbands killed in sectarian violence, where the message is often 'your problem is not your Sunni neighbour; it's not having a job', a message that she said needs to be broadcast more widely in the country.[15]

This focus on reality and locally based problem solving is topical, because of the nature of today's conflicts. No longer are these the interstate wars for which many of our models of conflict prevention and resolution were built. They are often civil conflicts where neighbours

> *"Women may have a role in breaking down the paradigm that a peace process is a dividing of the immediate spoils for those who made it to the table."*

may have to return, or simply remain, living next door to those who may have killed, raped or stolen from them. Not only can those who are aware of how those 'real' lives are led add critical observation to a peace table, they may also have a role in breaking down the paradigm of a peace process that suggests it is essentially a dividing of the immediate spoils for those who made it to the table.

Benefits: holding up the middle and reversing the slide back to conflict

Coming back to Northern Ireland, the process there also illustrates an interesting point about the potential for women in politics to keep the middle ground alive. The NIWC – its job with the agreement itself done – closed its doors in 2006 and the women returned to their parties, or simply their lives. While the participation of women in Northern Irish politics has remained greater than it was before the Coalition, it is still unimpressive (14% members of the 108-strong Assembly are women). What has been lost over the previous ten years, analysts argue, despite the obvious achievements in implementation of the agreement, is a true middle ground in Northern Irish politics.

Belfast-dwellers today, while living in a much more prosperous town bristling with developers' cranes, live segregated behind their peace walls while their politicians, they say, share power but no sympathy. Many now argue that greater involvement of the kind of women, and the kind of cross-party motivation behind the NIWC throughout the agreement's ten-year childhood might have kept that middle ground alive,

14. Maha Abu Dayeeh Shamas, Executive Director of the Jerusalem-based Women's Legal Aid and Counselling Service, in a speech to the UN Security Council (May 2007), quoted in Anderlini and Conaway: 53.

15. *Chicago Tribune* (11 March 2008).

and thereby increased the potential for starting the long process of breaking down the deep sectarianism persisting in the province.

In Cambodia, a land where the promises of mediators and the international community were thoroughly broken in the early 1990s, human-rights abuses, political violence and economic hardship are still commonplace. Anderlini and Conaway quote a male Khmer politician who argues that this situation would not be so bad had Cambodian women played a greater role in politics. He claims that Cambodian women politicians have shown a greater commitment to moderation and practical, rule-of-law-focused problem solving, saying 'We want more Khmer women to be candidates because women don't solve problems by force and gunpoint'.[16] In Guatemala, the peace process was notable for its inclusiveness, not only of women but also of indigenous groups, trade union groups and more. There were years of wrangling about implementation after the lengthy agreement was signed but, critically, Guatemala has not slid back into conflict. Perhaps inclusiveness, time-consuming though it is, can indeed provide a bulwark to support a nascent democracy and to protect against decline back into conflict, through providing amplifying networks for key aspects of peace settlements to be discussed and shared.

> *"The evidence suggests that inclusion is a low-risk investment that can yield long-term dividends for sustainable peace."*

Benefits: the use of alternative tactics

Women have often used different approaches from men in dealing with conflict situations; these approaches are not necessarily better and more effective (although they are frequently so). Again, the point is that the very difference is suggestive of the potential of more options being on the table if women are included. For example, in the Niger Delta in 2002, women changed the tenor of the stand-offs between local communities and international oil companies by staging a non violent sit-in. This led firstly to more discussions between the companies and the communities, and then more concretely to the creation of a series of community-based programmes based on priorities suggested by the women. These included creating jobs for local communities, starting a micro-credit programme for women, and funding schools, clinics and water and electrical installations in the area.

This particular incident did not see the final end to that conflict, but indicates the potential of different forms of action for starting the process of transforming viewpoints in a way that can lessen, and hopefully stop, violence.[17] In the Solomon Islands and Papua New Guinea, mediators called on women to disarm their men physically, which many of them did, a feat that armed peacekeepers might not have been able to achieve in a way that preserved dignity and allowed the broader process to continue.

Nicety or necessity?

The mediator's trade depends on his or her belief in the potential of dialogue to render apparently monstrous 'others' into potential negotiating partners. The arguments of the peace- process actors and researchers in this paper are offered as the start of a dialogue with those mediators who still see concepts of gender as just such an 'other'.

Understanding the different experiences, perceptions, skills and attributes of the men and women involved in a conflict and a peace process expands the understanding, tools and options available to the actors who want to work in support of a sustainable peace. More effort, more foresight and more time may well be required, and so is more exposure to what it means to unpick a substantive issue from the points of view of the different genders in different cultures. However, so far, the evidence suggests that this is a low-risk investment that can yield long-term dividends for sustainable peace. Perhaps each reader's different personal bias will lead him or her to interpret such a conclusion to mean that gender sensitivity is more or less of a necessity. But surely the evidence shows that it is more than a mere nicety.

16. Anderlini and Conaway: 127.
17. Anderlini and Conaway: 41.

Norm-pushers or deal-brokers? Normative challenges of modern-day mediators

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2015

Mediation processes are faced with increasing expectations. Mediators are not only asked to assist negotiating parties to bring a conflict to an end, they are also increasingly expected to integrate gender, human rights, justice, democracy and other norms into the mediation process. The UN *Guidance for Effective Mediation*, published by the Secretary-General in 2012, is a cornerstone of the growing normative framework.[2] In line with this, many international organisations and foreign ministries increasingly follow norms-based policies and ask compliance from the mediators they mandate.

The growing normative expectations in mediation processes have sparked intensive debates in the mediation community. How do norms influence mediation processes, and how far should a mediation process be guided by normative expectations? Is there a hierarchy of norms in mediation processes? What is the role of the mediator in managing different normative demands? These questions cut to the heart of the debate among mediation practitioners. While some urge mediators to integrate as many normative propositions as possible, others argue for a maximum amount of pragmatism and flexibility for mediators.

> *"Mediators are increasingly expected to integrate gender, human rights, justice, democracy and other norms into the mediation process."*

Normative frameworks in mediation have undoubtedly changed over the past few years, reflecting a greater professionalization of the field. Despite acknowledgement of their importance, and growing attention to the topic, the role of norms in mediation processes has so far rarely been analysed. Therefore, swisspeace and the Norwegian Peacebuilding Resource Centre (NOREF) carried out a research project in 2014 interviewing some 20 senior mediation practitioners to explore how norms influence their mediation practice.[3] The insights, arguments and quotes in this report are based on these interviews.[4]

This research shows that most mediators welcome the growing relevance of normative frameworks. However, when faced with demands to include a mushrooming

1. The authors would like to thank Christina Buchhold, Paul Dziatkowiec and Mathias Zeller for their most helpful support in drafting this report. It is based on earlier research conducted with substantive and financial support from the Norwegian Peacebuilding Resource Centre (NOREF) and the Mediation Support Project (MSP), funded by the Swiss Federal Department of Foreign Affairs. The content of this report binds only the authors and does not reflect the views of NOREF nor the Swiss Federal Department of Foreign Affairs.

2. UN Secretary-General. *UN Guidance for Effective Mediation*, Doc. A/66/811. New York: United Nations (2012). It provides guidance on eight fundamentals, among them national ownership, inclusivity, international law and other normative frameworks.

3. At the time of interviewing, they represented the following institutions: international organisations (four), nongovernmental organisations (seven), think tanks and academic institutions (four), religious institutions (one) and foreign ministries (six). The interviews took place from May to December 2014.

4. The full findings of the report and the list of interviewees are available in: Hellmüller, Sara, Julia Palmiano Federer and Mathias Zeller. *The Role of Norms in International Peace Mediation*. Bern: swisspeace/NOREF (2015).

set of norms in increasingly complex conflict contexts, the lack of a clear strategy on how to address them can result in an overloaded mediation agenda and the conflation of different objectives within the same process. Therefore, various norms must be categorised and prioritised in a given context. This appears to be already common practice among mediators, but is often done implicitly, without clear and transparent criteria. This paper thus proposes an approach that helps mediators to assess and navigate the challenges of including norms in mediation more systematically.

Making sense of it all: how to categorise norms in mediation

Norms are commonly defined as 'collective expectations about proper behaviour for a given identity'.[5] For the purpose of this report, the identity refers to that of mediators involved in official international mediation processes aimed at resolving violent conflicts. The current debate on norms is linked to advocacy for a growing set of norms from different sources. Norms in mediation can stem from international conventions, UN General Assembly and UN Security Council Resolutions, foreign ministries' administrative guidance, and civil society campaigns and donor requirements.

The extent of concrete demands on mediators largely depends on the specific organisation mandating the mediation: the UN, the EU, a state or an NGO's own institutional frameworks will determine different normative expectations for the mediators they mandate. A mediator's own normative socialisation also plays a role. If mediators themselves are convinced of a certain norm, they design the process accordingly, are less likely to question it, and will try to ensure that it will be included and respected in a peace agreement.

So how can one categorise the plethora of norms that affect mediation? Three distinctions are important, as illustrated in Figure 1. First, there is a distinction between **content-related and process-related norms**. Content refers to what might (and might not) be negotiated during a mediation process, and what will eventually figure in the final peace agreement. For example, the prohibition of any unconstitutional change of government, or the inclusion of topics such as security, power sharing or wealth sharing in a peace agreement are all based on content-related norms.[6] Process-related norms, on the other hand, define how a mediation process is planned and conducted. Examples include norms such as inclusivity and impartiality.

> *Many mediators would weigh the 'lesser of two evils', prioritising ending violence and the right to life while disregarding certain norms when the situation requires a hard choice.*

Second, academic literature makes a distinction between **settled and unsettled norms**.[7] A norm is considered settled in international relations when 'it is generally recognised that any attempt to deny it requires special justification'.[8] These norms have usually become internalised and therefore they are not necessarily visible since it has become 'normal' to behave in line with them. In contrast, as long as norms can be overridden without (or with little) justification, they are considered unsettled.[9] Settled norms can be content-related or process-related. *Jus cogens* norms, such as the anti-genocide, anti-slavery and anti-apartheid norms, provide an example of content-related settled norms in the strongest sense. Inclusivity, in the sense of involving all the relevant conflict parties (e.g. those who hold power) and main stakeholders (e.g. those who are probably going to be most affected by the outcome of a peace agreement) can be seen as a process-related settled norm. It would be hard to imagine a mediator questioning the importance of this norm.

5. Katzenstein, Peter. *The culture of national security: norms and identity in world politics*. New York: Columbia University Press (1996). We distinguish norms from values. While the former provide guidance for social behaviour, the latter are more abstract and reflect beliefs about what is good and what is evil.
6. For instance, security might be based on the norm of the right to life, power sharing on the norm of self- determination and wealth sharing might be based on the norm of economic equality. Sometimes norms are confused with other 'distinct and interrelated elements of social institutions' (Finnemore, Martha and Kathryn Sikkink. "International Norm Dynamics and Political Change". *International Organization*, Vol. 52, No. 4 (1998): 891). Anti-apartheid, for instance, is not a norm, but a political programme based on a normative framework composed of norms such as equality, non-discrimination and social justice.
7. Frost, Mervyn. *International Relations: A Constitutive Theory*. Cambridge: Cambridge University Press (1996): 97–105.
8. Raymond, Gregory A. "Problems and Prospects in the Study of International Norms". *Mershon International Studies Review*, Vol. 41, No. 2 (1997): 224.
9. For literature dealing with the process of how norms become settled, see also Finnemore and Sikkink (1998).

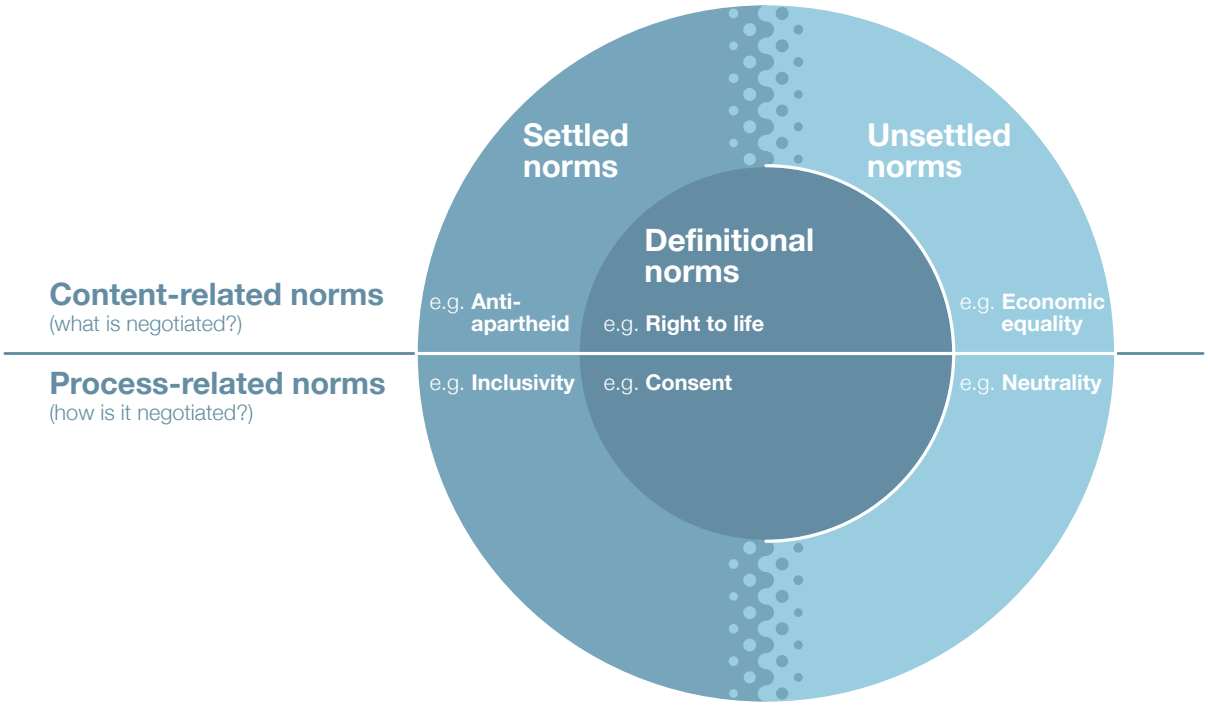

Figure 1: Categorisation of norms

Third, some norms underpin the very definition of a mediation process. These pertain to its nature and are thus necessary **definitional** elements. They can also be content- or process-related. For example, the right to life is a content-related definitional norm. If a third party started making military alliances or striking arms deals with other conflict parties, one would no longer consider such an intervention to be truly 'mediative'. Consent could be considered an example of a process-related definitional norm.[10] As soon as a mediator starts negotiating with the parties to advance forcefully his or her own agenda, it is no longer mediation, but would qualify as another form of third-party intervention (e.g. high-powered diplomacy or sanctions).

At the centre of the current debate is the question of which norms are settled and which are unsettled. Different mediators, mandate-givers and negotiating parties might view different norms as settled or unsettled. Moreover, since there is no unequivocal definition of mediation, the debate might go further and not everyone might see the same norms as necessary definitional elements. These discussions are even more salient since the categorisation also influences how the different norms are prioritised.

Not all norms are created equal: how to prioritise norms in mediation

Mediators generally implicitly prioritise norms like the right to life and consent (settled and definitional) over norms like neutrality or economic equality, for instance (unsettled and non-definitional). If and how such other norms are brought into a process depends largely on whether they are seen as compatible with definitional norms.

In the interviews conducted, mediators strongly argued for prioritising the norm of the right to life. This does not mean that they would not want to strive for more holistic objectives also including longer-term societal transformation, but if the situation requires a hard choice, they would give priority to ending the violence. Other actors who support mediation processes from more of a distance were less adamant about this prioritisation. They see mediation processes as a one-time opportunity to lay down options for viable co-existence in the future – hence, mediators need to bring in the right norms whenever they can.

This is also linked to a difference in the interpretation of the overall objective of mediation. Some see

10. For instance, the definition in the UN *Guidance for Effective Mediation* (2012) includes consent: 'Mediation 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 primarily as an attempt to stop violence. As one mediator rhetorically asked in reference to the question of giving amnesty to former Yemeni president Saleh, despite the lack of a transitional justice law and before the reality of a national dialogue (two things that would counterbalance the amnesty): 'Would I have argued that it's better to continue the conflict [in Yemen] in 2011 and have people die? At least for two years people didn't die.' Such views consider wider processes of societal change as efforts for the longer term, that are beyond the scope of mediation. In this sense, many mediators would weigh the 'lesser of two evils', prioritising ending violence and the right to life while disregarding certain norms when the situation requires a hard choice. As one interviewee said with regard to another mediation process: 'It was very openly accepted that human rights have to be disregarded in this peace agreement so that the war can end'.

Most mediators also implicitly prioritise the norm of consent, meaning that parties approve of the mediation process and how it is conducted. For example, the prohibition against talking to indicted individuals may severely constrain mediators' ability to foster consent, and thus reduce their chances of success. When Sudanese president Omar Al-Bashir was indicted, only some African leaders and hardly any Western leaders would meet with him, according to one interviewee, which 'made the peace process a lot more complicated'. Similarly, a lingering indictment may also work against the consent of the conflict parties. The ICC indictment of Joseph Kony in Uganda for example directly affected the opportunity to have him at the table for a discussion. As one interviewee stated:

> Some would say that it was the right thing to do from a rights perspective, because he was responsible for bad things. But then you would also lose the opportunity to get him to the table.

Pushing too vehemently for non-definitional norms, like democracy promotion for instance, was therefore seen in some cases as running against the norm of consent. In this regard, mediators were often questioning whether the conflict parties really accepted these norms and whether they had roots in the communities. As one mediator observed:

> Whose norms are they? Are they Western norms? Or are they norms for human society globally? Unfortunately I think many of these norms would be seen as Western agendas.

Another interviewee spoke of the same danger of non-definitional norms undermining consent in different conflicts in Africa:

> The danger with the normative framework is that we are imposing a series of ideas that don't have roots in the community. The danger in that is that we take these things and try to impose them on every process. [The topics underlying these] norms such as constitutionalism or elections are two of these examples. The Central African Republic (CAR) is a great example: not only have they said in the agreement that there needs to be elections within a year – which is crazy – but it's in the UN Security Council resolution. There's an obsession around elections also in Somalia, and the UN is helping the elections in Sudan.

'Whose norms are they? Are they Western norms? Or are they norms for human society globally?'

These examples show that how mediators bring in non-definitional norms, such as democracy promotion, depends on whether or not they are perceived as compatible with the definitional norm of consent – that is, whether the parties want them included.

The norm of inclusivity, a settled, but non-definitional norm, provides another example of how definitional norms are prioritised. If mediators see inclusivity as running against the objective of ending violence in the immediate term, they will not uphold it. The Dayton process serves as an example here. It was highly exclusive as a process, in order to guarantee a quick settlement. If, however, mediators perceive an opportunity to allow for a more inclusive and hence more sustainable process as also the most effective way to end violence, then they will promote it. This was the case in Guatemala which 'ranks among the

> *By focusing too much on only a small part of a peace process – the mediation phase – we risk imposing overly high expectations on the mediator and forgetting that norms can also be sequenced.*

peace processes that made the most determined effort to broaden its agenda and to maximise civil society participation'.[11] Similarly, if inclusivity fosters consent of the main parties who themselves push for it, then mediators also strongly defend it. In Afghanistan, the main conflict parties promoted more inclusion to increase their own legitimacy.[12] If, however, the parties might fear a loss of power for themselves or are not in favour of including more actors or topics, mediators might also be hesitant to do so, in order to maintain the consent of the main stakeholders.

Notwithstanding this prioritisation, however, different norms should not be seen as incompatible in general. Rather, it is a question of how to sequence them. By focusing too much on only a small part of a peace process – the mediation phase – we risk imposing overly high expectations on the mediator and forgetting that norms can also be sequenced. As one mediator said:

> When we finished the process in Burundi, we had no idea what the Constitution would look like... But that was not our debate. That was a debate for Parliament that was going to be credibly elected.

Indeed, the interviewees repeatedly stressed that more emphasis should be given to the implementation of peace agreements. Mediators gave examples of agreements such as Northern Ireland's Good Friday Agreement, Nepal's Comprehensive Peace Agreement, and Sudan's Comprehensive Peace Agreement, that were signed years ago and where implementation is still incomplete. Therefore, respondents argued for a more holistic view of the peace process, rather than focusing all the attention and efforts on the mediation.

Based on the above, most interviewees talked about challenges rather than dilemmas when it comes to the issue of how to manage seemingly incompatible norms. The most important aspect, it seems, is to have more clarity and to make the distinctions explicit between well-established norms (settled and definitional) and those that have developed more recently (unsettled and non-definitional). At the same time, the question of the exact role of the mediator in promoting norms is also of central importance.

Defining their power: the role of the mediator in promoting norms

Most of the mediators in this research see themselves as facilitators who can influence the parties but not impose normative standards. The majority view was that those who feel particularly strongly about certain norms should not expect mediators to uphold these norms. Rather, they should focus their efforts to sensitise and convince the negotiating parties and their constituencies directly that certain norms are in their own interest. Indeed, many mediators experience being constantly lobbied during peace processes to include certain normative provisions in peace agreements. As one interviewee stated with regard to Darfur:

> We had gender advocates… that were trying to convince the mediator to put all the right gender provisions in the text. We're on board. We support a gender agenda. But the mistake is that it is not ours. It's the parties' peace agreement and the gender advocates made absolutely no effort to work with the parties.

Mediators can make their normative expectations more explicit, but only within the boundaries and obligations of their mandates. Where mediators' requirements are incompatible with the norms that the parties want to

11. Arnault, Jean. "Legitimacy and Peace Processes: International Norms and Local Realities", in *Legitimacy and Peace Processes: From Coercion to Consent* (Accord Issue 25). Alexander Ramsbotham and Achim Wennmann (eds). London: Conciliation Resources (2014).
12. Paffenholz, Thania. "Main results of 'Broader participation in political negotiations and implementation' Project 2011–2015". Geneva: The Graduate Institute of International and Development Studies (2014).

include, there are not many options for the mediator other than to withdraw. The natural power asymmetry between the mediator and the parties means that the mediator can be easily replaced. Thus, some mediators see their role clearly delineated to 'help the parties resolve their conflict in the broad interests of peace, stability and democracy, but they are not going to be overly principled or overly rigid.'

Despite these challenges, many mediators see norms as a tool that they can use pragmatically to advance a mediation process and reach an agreement. Norms can serve as a starting point to engage in discussions about their potential benefits for the negotiating parties – not necessarily for ideological reasons, but with the promise of a certain return. For example, mediators can argue that the normative framework of democracy promotion can confer more legitimacy on the parties. As one respondent stated:

> With democracy… there is a growing recognition among armed groups that there needs to be some type of democratic validation of the agreement and of their movement; they need to demonstrate that they do represent the people.

In that sense, mediators can encourage parties to consider certain questions, for instance related to gender equality or transitional justice. They can act as role models by reflecting cultural and gender diversity in their own teams, but mediators do not see themselves as 'norm entrepreneurs'. In other words, mediators do not necessarily consider it their main responsibility to promote these norms. As one mediator stated:

> The key thing is to realise that there are limitations to the power of the mediator. They can enable women's participation in a process, enable parties to look at questions of gender and wider questions of inclusivity, but they can't uphold or be the implementers or guarantors of those standards. That's beyond their power.

The difference in role perception between mediators and actors supporting mediation processes from a distance becomes more pronounced in this regard. The latter underline the importance of mediators bringing in norms such as gender, transitional justice and democracy promotion. This is understandable, since as representatives of foreign ministries or entities such as the UN or the EU, they are mandated to promote these norms which are at the heart of their foreign policy agendas. In this sense, the assumption is that these norms are already settled in mediation and have a clear value added also in the eyes of the conflict parties.

This is not always in line with the self-perception of mediators, however. For them, all roads lead back to the definitional norms that sit at the core of mediation: the consent of the parties and the main objective to move the mediation process toward an agreement that ends violence and thus respects the right to life. Yet, as shown above, it is of course possible – although not compulsory – for mediators to enable parties to adhere to certain norms beyond these definitional norms.

Conclusion

The normative framework has changed over the past few years and undoubtedly plays a significant role in mediation processes. Mediation practitioners welcome a more systematic and explicit approach to addressing norms as a step towards the professionalization of the field. The vast arena of different actors, mandates, and interests, however, has made mediation and the role of norms within it considerably more complex. While there seems to be consensus about the generally positive impact of norms such as gender equality, human rights, transitional justice, and democracy promotion, there is still considerable debate about how these norms can be categorised and prioritised, and about the mediator's role in promoting them.

We need a more open discussion about the role of norms in mediation. An explicit and commonly shared hierarchy of norms relevant to mediation processes will provide for more clarity about the essence and the limitations of mediation in general, and the specific mandate of a mediator in particular. This paper provides a first step by offering a way of categorising and prioritising norms (as illustrated in Figure 1). Mediators can apply this both to their own normative socialisation and to norms that their mandate-givers promote. At the same time, categorising and prioritising norms is always context-dependent. Mediators must work with conflict parties to see how they view the placement and role of these norms. This would bring the focus of mediation closer to local needs and concerns, and provide mediators with an opportunity to delve into the particularities of their working contexts.

Towards some ethical guidelines for good practice in third party mediation in armed conflict

Hugo Slim

2006

The following paper is designed to begin a discussion to explore if and what core values, operational principles and standards of good practice might be commonly agreed by the majority of Track I mediators in contemporary armed conflict. It was prepared after consultations with a small number of active mediators and by a comparison with widely recognized codes for mediation in the commercial and legal sectors, plus other codes of ethics from the fields of medicine and anthropology. The draft guidelines are written for mediators and so say little about the conduct of the other parties to a mediation.

> *Mediators have a range of moral obligations to the people affected by the conflict, to the political parties to the conflict, to concerned observers and to the wider mediation profession.*

The document is tentative and incomplete, identifying some but by no means all critical issues in mediation. It deliberately takes positions on these issues in order to encourage agreement, disagreement and alternative suggestions. Its positions only represent one of many possible approaches. It also sets out a number of mediation values which may not be common to all conflict mediators but are intended to start a discussion of what basic values might be. It also suggests that mediators have moral obligations beyond the immediate parties to a peace process. Some may find this basic assumption problematic. It makes an attempt at some fundamental definitions – notably of the terms 'mediation' and 'peace facilitation' in armed conflict and draws a distinction between them. These definitions will also be a matter for discussion. Equally important, the document says nothing about how any such putative guidelines might be agreed, overseen or enforced in practice. This might be done by a mediator's own systems of accountability or by an acceptable international body like the United Nations.

The purpose, at this stage, is simply to start a discussion about the desirability, utility and substance of any guidelines for mediation of this kind.

Preamble to draft guidelines

Third-party mediation in international and non-international armed conflict is highly political, fluid and complex. It involves careful long-term engagement in situations where widespread human suffering is common and thousands of lives are at stake. Many armed conflicts are deep and protracted with painful histories of extreme violence, inter-group hatred, oppression, humiliation, profound political suspicion and active involvement of other states.

In such conflicts, mediators have a range of moral obligations to the people affected by the conflict, to the political parties to the conflict, to concerned observers and to the wider mediation profession.

To meet these responsibilities, mediators must operate to a high standard of professional conduct which requires knowledge and skills in certain areas.

In addition to practical skills, mediators are also routinely required to make a succession of choices – which can be extremely difficult – about the process, the relationships and the substance of negotiations which they are initiating or facilitating.

The following values and standards are intended to guide mediators towards appropriate professional conduct and to help them make their choices and judgments with due moral care and deliberation.

> *The mediator has a personal and organisational responsibility to be good at his/her job and to offer a service of the highest possible technical and professional standard to the parties concerned.*

Draft guidelines

The values and standards in these guidelines are a general but practical guide to professional good conduct in armed conflict mediation, offering a simple frame of reference to support ethical and professional decision-making. Their purpose is to help mediators and, to some extent the parties to a mediation, to reach sound judgements about the particular choices they face.

Terminology

Conflict resolution activity can involve a variety of third party roles from conflict resolution organisations. These can be broadly distinguished as mediation and peace facilitation. In this document, mediation in armed conflict is understood as 'a political process in which two or more parties to the 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] While agreement on this common definition of mediation is essential to this document, it also recognizes that there is not one single operational approach to political mediation of this kind. Thus the document aims to be relevant whether a mediator is more hands-off or 'enabling', or more 'interventionist' (presenting and recommending certain solutions), or even actually driving the process.

The term peace facilitation describes those different forms of conflict resolution work which are not full mediation but which also need to be guided by these standards. Various forms of peace and conflict resolution work frequently operate upstream of or alongside a mediation that is being led by others. Such peace facilitation typically involves: setting up initial bilateral contacts with each party alone; one-way message carrying to a party; back-channel communications with one party via an additional intermediary, or more explicitly one-sided capacity-building work with one party to enable their fair participation in a peace process. Such capacity-building may include negotiation support, logistical help or networking a party into wider civil and international society.

Much peace facilitation of this kind can and should be done in the ethical spirit of these mediation standards to ensure the confidence of the parties, maintain the impartiality of the organisation concerned and preserve the wider reputation of the conflict resolution profession. Sometimes, however, organisations choose to do such work in an explicitly partisan spirit of active solidarity with one preferred side. Such partisan peace work must be declared openly.

Mediation values

Mediation in armed conflict has its own particular moral interests. These need to be made known to the parties to a conflict as early as possible as the core values and fundamental concerns of the mediator. They include:

Intent to alleviate human suffering: a mediator's immediate concern in ending armed conflict is to ensure the end of human suffering from war.

1. Slim, Hugo. *A Guide to Mediation: Enabling Peace Processes in Violent Conflict*. Geneva: Centre for Humanitarian Dialogue (HD) (2007): iv.

Peaceful solution: a mediator's ultimate concern is for the parties to reach an agreement, which begins to secure a just and sustainable peace in the best interests of society at large and to take all people's interests into account. A good agreement finds ways to build on common interests, but also understand and tolerate significant differences. An incremental agreement, while an imperfect step in this direction, can be useful, if incomplete. But an agreement which favours one faction unfairly, arbitrarily and unjustifiably excludes others or actively condones a new or continuing pattern of human rights violations must be considered a bad agreement.

Preference for dialogue: where talks are held fairly, in good faith and with a reasonable possibility of success, a mediator intrinsically prefers a process of dialogue to that of violence as a more moral means of resolving disputes.

Voluntary agreement: mediation sets out to achieve a mutually determined agreement. It believes that agreements which are truly co-generated and owned by all parties are most likely to be acceptable to all parties, to be most effectively implemented and to last longest. To this end, a mediator will not use force or coercion to impose a solution. However, this restraint on matters of substance does not preclude a mediator from using firm pressure to push forward the process of talks. This is often an important part of a mediator's role.

Impartiality: the best way to help the parties to elicit and reach a mutually determined and peaceful solution is to remain a genuinely disinterested third party and not favour one side over the other. In all their considerations and actions, mediators should be free from bias or prejudice regarding any party. At all times, the mediator should make decisions that are based on the best interests of the process and not the interests of one or other party or of one or other particular solution.

> *"A mediator must expect to face dilemmas and complex choices at every stage of a peace process which should be anticipated and engaged with."*

Operational standards

Trust

The need for a mediator to enjoy sufficient trust and confidence of the parties is essential to a successful and ethical mediation. Gaining and keeping this trust requires the mediator to combine personal confidences with transparency in his/her dealing with all parties. Certain standards of conduct can help to ensure that the mediator maintains the role of a genuine, trusted and impartial third party in the process. The mediator must:

- Operate with appropriate and equal levels of intimacy in his/her relations with the parties. A certain level of separate contact and confidences with each party is necessary to appreciate their particular situation but this must in no way lead to a real or perceived sense of unequal treatment or favouritism within the process. Before, during and after the process, the mediator must avoid any conduct which could give the appearance of partiality.
- Always be as consistent, predictable and reliable as possible with both parties throughout the peace process. This means always doing what has been agreed as matters of procedure, holding a consistently impartial position on different options raised in the substance of the talks, and taking due care to have similar kinds of relationships with individuals in each of the parties.
- Be as transparent as possible with each party about his/her relations with the other party and with any other interested parties to the conflict and peace process. If in doubt, a mediator should always tend towards transparency with the parties.
- Have no personal or professional conflicts of interests which may actively influence his/her role, or be perceived to do so. These may include material interests with one or more parties. Nor must a mediator's personal ambitions ever trump the best interests of the process so that an agreement is secured primarily in the interests of his/her own personal renown and professional advancement rather than in the interests of the parties. The mediator must always declare any relevant interests at the outset of a peace process or immediately when they arise during the process.

Confidentiality and information sharing

The careful management of information within a peace process is a critical responsibility for mediators. It

concerns both private information sharing between the mediator and the parties within the process as well as outside the process to the public and other interested parties. In all matters of information sharing, mediators must judge between the needs for confidentiality and transparency that are both integral to trusted and effective peace work.

• Within the process, the mediator needs to know as much information as possible about each party's needs, interests, positions and capability to help make the most of any dialogue. However, information about one party can be abused by another or create an unfair advantage of some kind. Any sharing of information between the parties by the mediator must, therefore, usually be done with the informed consent of the party concerned. In exceptional circumstances, the mediator may judge that some information which a party seeks to keep confidential is in fact process-critical information. This is information which could make or break the process or prevent a significant violation of human rights. S/he may deem it necessary to pass such information without consent in the best interests of the process. In such situations, the mediator must also judge if it is best to inform the party concerned that s/he intends to do this with or without their consent to preserve, at least, the mediator's transparency with each party.
• Outside the process, the best interests of the process require that the mediator be free to build his/her own relationships with other representatives of the public not present inside the talks and with other state parties or international agencies interested in and supportive of the process. In all these dealings, the mediator should not breach confidences agreed by the parties to the talks and only share information from within the talks with the informed consent of the parties. But in exceptional circumstances, in the interests of the process or to prevent significant violations of human rights, the mediator may also use his/her discretion to share process-critical information without consent. Once again, the mediator must judge if it is best to inform the party concerned that s/he intends to reveal the information with or without its consent to preserve, at least, the mediator's transparency with each party.

Competence and qualifications

The mediator has a personal and organisational responsibility to be good at his/her job and to offer a service of the highest possible technical and professional standard to the parties concerned.

> *A mediator must assume ultimate accountability for his/her choices, actions and decisions relating to the peace process.*

• The mediator and his/her team must be appropriately qualified and competent in mediation techniques through experience and/or professional education. S/he should also directly possess, or have immediate access to, the particular knowledge and skills necessary to the peace process in which s/he engages.
• Integral to a mediator's competence must be an ability to evaluate – consciously, self-critically and regularly – his/her own performance and to learn from and apply the lessons of previous experience within current and previous mediations.

Quality of the process

An essential part of a mediator's competence is an ability to run a high quality mediation process which is in line with the values and principles of these standards, is representative, transparent, understood and agreed by all parties, and is run smoothly, fairly, consistently and efficiently.

• At the outset, the mediator should firmly agree with the parties about the purpose and structure of the talks, including e.g.: the desired outcome; the mediator's role; whether this process is the sole track; terms of confidentiality within and beyond the process; the appointment of a legitimate spokesperson; the format, venue, agenda and spirit of the talks; certain acceptable procedures to get through blocks if they emerge; agreeing common deadlines; and a system of record of the process.
• The mediator should also clarify with the parties what constitutes appropriate and representative levels of participation in and around the talks: who qualifies as an appropriate participant; how the views and needs of men, women, children and minorities are fairly represented in discussions, and any protocol concerns around participants.

• These terms may usefully be set out in a single 'Declaration of Purpose, Principles and Procedure' for the process.
• The mediator is responsible for securing and enabling a good working environment for the process to take account of participant safety as well as providing efficient administrative and logistical support. The mediator should ensure that the working environment fosters an atmosphere of mutual respect and gives no unfair advantage to one side over the other.
• As convenor, moderator or chair of the meetings, the mediator should ensure that the process of talks and any implementation of agreements are well managed; keep to time and deadlines; are procedurally fair; and also sufficiently flexible to allow for the unexpected.

Respect for the profession

Mediators have an obligation to enhance the reputation of the wider mediation profession. They should not engage in conduct which damages the integrity and reputation of the mediation profession or compromises the current work or future opportunities of other mediators in armed conflict. Mediators should always seek to operate in a way which exemplifies the highest standards of principle and practice in all their work.

• Mediators from different organisations should, wherever possible and appropriate, keep each other informed of their contacts and intentions within the same armed conflicts. This is to avoid conflicts of interests and the risk of undermining an existing process by seeking to establish a new or parallel track which may be abused by parties to the conflict. When a competing process is embarked upon, there must be good grounds to show that this is primarily in the interest of peace rather than organisational self-interest. The new mediator must then share his/her plans and progress with existing mediators as soon as possible.
• Mediators should refrain from generalised or ill-informed public criticism of fellow members of the profession in situations where they are unlikely to be in possession of all the facts of a process.
• Mediators should share experience and research across the profession, and beyond, so as to develop good practice and improve the performance and reputation of mediation in armed conflict and also to generate greater understanding of its purpose and potential within national and international society. In particular, mediators should explore the role of women mediators in enabling effective peace processes.
• Mediators should seek to increase diversity within mediation organisations wherever there is evidence to suggest that this will make a positive difference to the process by enabling a more appropriate culture of mediation, which has greater affinity with different groups represented, but which still holds to the values and principles of this code.
• The profession should enable more women to become mediators wherever evidence suggests that gender diversity is critical to a positive mediation process and could encourage important reciprocal participation by women from the parties to a conflict.

Marketing mediation

Mediators must not exaggerate or misrepresent their services and skills in their marketing and public relations or unfairly denigrate the services of other mediation organisations. They should:

• Always give an accurate description of their aims, competence and capacity.
• Always secure the informed consent of any party to a conflict before referring to them in their public relations information.
• Never seek new business in a way which suggests their partiality for one party over another and so undermines the integrity of any eventual peace process.

> *"Confidentiality must never be abused to avoid accountability."*

Due deliberation

A mediator must expect to face dilemmas and complex choices at every stage of a peace process which should be anticipated and engaged with, as a matter of professional competence.

• Mediators should employ a conscious and accountable process for careful consideration of difficult choices and options, which includes wherever possible active consultation with others in and around the process.
• A mediator could be deemed negligent if s/he were not able to show that s/he had given due consideration to any such matters arising in or from a process.

Withdrawal

A mediator may decide to withdraw from a peace process when, for example:

• The process is obviously being pursued in bad faith by one or more parties.

• The process is leading to a solution which the mediator deems to be wholly unworkable, illegal or profoundly at odds with mediation's core values of a humanitarian intent or a peaceful solution.

• The mediator finds it impossible to continue to operate impartially or is unable to secure a sufficiently high quality process.

• An alternative track or different approach promises better results.

Accountability

A mediator must assume ultimate accountability for his/her choices, actions and decisions relating to the peace process, to the conflict parties, society at large, to other concerned parties, and to members of the wider mediation profession.

• Such accountability should be published in a variety of media and be circulated as widely as possible in the interests of transparency and learning, but not if this is detrimental to the interests of the process.

• When confidential information makes it impossible to give a full account of a mediator's decision-making, this must be made clear. However, confidentiality must never be abused to avoid accountability.

It ain't over 'til it's over: what role for mediation in post-agreement contexts?

Elizabeth Cousens

2008

International mediation is conventionally treated as the preserve of peace processes which, once culminating in a peace agreement, are expected to progress to implementation and various forms of post-conflict recovery in which mediation would have little or no part. Many have criticised the degree to which mediators focus on getting a deal and getting out, leaving the messy business of implementing those deals to others, at least until the deals fray or come apart, requiring new rounds of mediation.

Most negotiated settlements create outcomes with at least some – and often many – issues unresolved, requiring some mechanism for continued negotiations and peacemaking, either embedded in or alongside whatever structures are in place to implement an initial agreement. The types of issues likely to arise are commonly noted in mediation literature and practice. They include:

- tough issues deliberately avoided in initial mediation in order to get agreement around core issues where a compromise can be reached (e.g. Kosovo final status);
- disputes over interpretation of an agreement, including in relation to tacit understandings cultivated by mediators;
- new issues that arise post-agreement, either unanticipated in initial mediation (e.g. oil discovery in Timor-Leste) or that may derive specifically from disputes over implementation, especially in the absence of effective implementation monitoring or dispute resolution mechanisms (e.g. electoral provisions in post-Dayton Bosnia);
- eruption of localised conflict (e.g. Ituri and Kivu in the Democratic Republic of Congo);
- dealing with parties who were excluded from initial mediation who have the capacity to destabilise the situation (e.g. the Taliban in Afghanistan) as well as general 'spoiler' management;
- continued requirements for confidence building between the parties, and managing relationships with key regional and external actors, and
- dealing with crises generated by rising expectations.

There may also be a role for mediation-like efforts in relation to post-agreement dialogue processes or similar efforts to broaden popular support for a settlement. This dimension of post-agreement consolidation has a particular salience if one understands contemporary civil wars to be predominantly rooted in crises of the state and state-citizen relations.[1]

Whether these issues arise, and the seriousness of the risk they pose to a given peace process, will obviously vary from case to case. However, there is generally a particular risk in the immediate post-agreement phase, increasingly referred to as the period of 'early recovery'. This is a period in which there is usually an unhelpful constellation of factors creating new uncertainties – including change in international personalities, institutional handovers, implementation mechanisms in the process of being established, and new flows of resources – which creates new opportunities and incentives for backsliding and spoiling. There is also, of course, the broader concern about the generally high rate of relapse in negotiated settlements.

1. Crocker, Chester A. "Peacemaking and Mediation: Dynamics of a Changing Field". Coping with Crisis Working Paper Series, International Peace Academy (March 2007); Ghani, Ashraf and Clare Lockhart. "Writing the history of the future: securing stability through peace agreements". *Journal of Intervention and Statebuilding*, Vol. 1, No. 3 (2007).

Taken together, these factors underscore the importance of treating the post-agreement period as the continuation of a high-stakes political process. In some respects the situation in this period may be more fragile or turbulent even than during the prior conflict because of new risks, uncertainties, and occasionally perverse incentives. Therefore, political process is crucial here, with what Fabienne Hara has referred to as conditions requiring 'sustained mediation'.[2] In short, this is a context in which the need for further mediation – especially if broadly understood – is likely to be high.

What is different about mediation in the post-agreement period?

In some basic respects, mediation post-agreement is not that different from mediation to get an agreement in the first place. The task is still to facilitate or broker agreement among political parties who disagree, and the effectiveness of mediation will still turn on the kinds of professional skills and requirements noted by Brahimi and Ahmed, among others[3]. However, the post-agreement context is likely to be distinctly different in some fundamental respects that can enable, or disable, prospects for effective mediation.

First, the nature of international involvement will be transformed by whatever apparatus is put in place to support implementation, whether this is a major multi-dimensional peace operation, a special political mission, donor mechanisms or other forms of transition assistance. NGOs are also likely to flood in with resources and programmes. This creates obvious coordination challenges within the mosaic of UN, regional organisations, military operations, neighbouring states, donors and NGOs that will variously be present and all engaging in some fashion with previously warring parties and their constituents. (It may also create the need for 'mediation' among implementing actors.)

Second, such international presence can create new sources of leverage, especially if an international peace operation is mandated under Chapter VII by the Security Council, exercises transitional authority, or if there are diplomatic or other resources that are clearly at the disposal of an international presence. The ability to use such leverage will turn on many factors, including the degree to which there is a shared international strategy for how and when to use it. There is also likely to be a tension between exercising leverage and an overall presumption in favour of post-conflict authorities and 'national ownership', a concept that warrants more critical and fine-grained reflection in relation to specific conflicts.

> *"The situation in the post-agreement period may be more fragile or turbulent even than during the prior conflict because of new risks, uncertainties, and occasionally perverse incentives."*

Third, at the same time, there is a risk of diminishing attention from key capitals at the political level as the urgency of war-termination subsides. There will usually also be a shift to other actors within those capitals – principally, to development and technical agencies – as the focus moves from negotiation to implementation and broader recovery. This is an old issue and among the earliest concerns about international assistance in war-to-peace transitions that spurred the original interest in peacebuilding as a field of inquiry in the 1990s, as well as the recent creation of the Peacebuilding Commission in 2005.

Fourth, the culture and practices of implementing agencies tend to be very different from those of mediators, as much as they also differ from one another. The many manifestations of peacekeeping operations will be shaped by doctrine, standard operating procedures and military requirements. The actors engaged in post-conflict recovery will tend to be shaped by the practices, routines and generally technical

2. Hara has made this point most consistently about Burundi in International Crisis Group reports but also more generally in unpublished papers and lectures since 2003.
3. Brahimi, Lakhdar and Salman Ahmed. "In pursuit of sustainable peace: the seven deadly sins of mediation", in *Annual Review of Global Peace Operations.* Center on International Cooperation (ed). Boulder CO and London: Lynne Rienner Publishers (2008): 9–20.

orientation of donors and specialised agencies. Each will also have distinct mandates, different approaches to and knowledge of the practice of mediation, and varying constraints in relation to political processes. Though a rough generalisation, the actors and agencies involved in implementation environments will tend toward the technical and programmatic in a way that is generally unlike the culture and 'craft' of mediation and diplomacy. This difference in professional culture and skill sets compounds the coordination challenges noted above.

Fifth, there is usually a higher degree of popular exposure in post-agreement contexts, as well as higher popular expectations. This creates distinct dynamics and pressures on any subsequent mediation, as well as new requirements for communication and public-information strategies.

Finally, and perhaps most fundamentally, as the parties themselves make the transition from war to peace, they face new constraints and pressures to which any further mediation needs to be attuned. These include managing the fallout of any compromises they will have made with constituencies, navigating their own changing incentives and interests, and generally contending with conditions of considerable uncertainty and flux. The likelihood of what political scientists and economists call 'information failures' may actually rise after a peace deal is made, with attendant risks of misunderstanding, miscalculation and additional volatility. Ironically, the interests of the parties may be more aligned in the context of negotiating an initial deal than in the context of implementation where the consequences of compromise – and differential effects on different parties – start to become real.

> *"Ironically, the interests of the parties may be more aligned when negotiating an initial deal than during its implementation where the consequences of compromise start to become real."*

What are the implications for how post-agreement mediation should be conducted?

Every context will necessarily present unique issues and dynamics, according to which international mediation strategies should be crafted. Nonetheless, several factors are worth keeping in mind.

First, the UN or other implementing bodies need to give careful thought to continuity of personnel. Particularly in the immediate post-agreement phase, there is a good argument for retaining core elements of the previous mediation team, if not also the lead mediator, in order to ensure that all the intangibles and unspoken understandings of a prior negotiating process are not lost with institutional or leadership changes. Mr Jean Arnault in Guatemala, Ambassador Terje Rød-Larsen in Israel-Palestine, and Ambassador Lakhdar Brahimi in Afghanistan are some of the most obvious examples in which continuity was important to early implementation. There may of course also be contexts in which international 'new blood' is actually more productive, depending on the quality of the mediator's relationship with the parties. In this case, retaining key staff and capacities below the level of envoy or Special Representative of the Secretary-General (SRSG) can be a way of managing the risks of handover.

Second, all of the operational processes to design and deploy peace operations or implementation mechanisms – integrated mission-planning processes, integrated peace-building strategies, post-conflict needs assessments and so on – would benefit from keeping a more consistent focus on the core political requirements of post-agreement contexts. This relates to mission structure and capacities, skill sets of key personnel, and support systems required to backstop the likely need for ongoing mediation in some form.

In particular, SRSGs or their equivalent need to have the structure, resources and flexibility to manage or facilitate complex political processes. These include: robust information and analytical support; budgetary and operational flexibility to work with (i.e. travel to) key capitals and regional players; modest discretionary resources for political process management; standby access to envoys, mediators and technical experts who may need to be deployed to solve particular problems;

ideally, a unified intergovernmental mechanism to support a continuing political process;[4] and, not least, a clear political lead.

Third, the parties and any lead international presence need to be able to draw on a diverse pool of alternative mediators with specialised knowledge, less visibility, and perhaps even deniability in relation to a major international mandate. The choice of mediator and approach to post-agreement mediation should obviously match the type of crisis or conflict that arises but also reflect sensitivity to the potential reluctance of parties to seek further international mediation at a time when they see themselves more decisively in the driving seat (and when they may already be struggling to retain or gain domestic credibility). Mediators of an initial deal can help offset this risk by trying to get agreement about robust implementation and dispute resolution mechanisms that either don't require international involvement or that structure it in such a way as to diminish sensitivities. Where UN or regional organisations are involved in implementation, including language in mandates that gives a clear entry point for further good offices and facilitation is also a sensible anticipatory move.

Fourth, the degree to which the many international actors usually engaged in post-agreement contexts have little knowledge or experience of mediation could be partly offset by renewed efforts within the mediation community to develop shared standards of practice, expectations of performance, and complementary support systems across institutions. Greater professionalization of the field, done intelligently, would contribute to improving the understanding of mediation within organisations or agencies that don't 'do mediation' about what continuing mediation entails and how it links to their work.

Fifth, and an old but persistent point, the risk of mixed messages (and therefore ineffective mediation) requires a particular clarity about international lead, which most likely should be the SRSG or equivalent. This does not mean that he or she is necessarily the mediator of first resort in post-agreement contexts. Indeed, for the reasons noted above, there may be a strong argument for using different mediators, depending on the sensitivities of the parties to further international mediation, the substantive issues at stake, the relationship of those issues to a broader international mandate, and basic determination of who would conduct the most effective mediation of a new dispute. However, there does need to be a reasonably unified international strategy, which, arguably, is most sensibly driven from the field.

This may be a contentious point in the increasingly crowded arena of international peace work, but it is crucial. The move within the UN system toward integrated missions has been spurred by precisely this concern about the need for 'unity of effort' among the key elements of a post-agreement presence – principally troops, diplomats and donors, to put it simply. Integrated missions are only a partial solution, however, as they remain a structural remedy (if by and large a tonic one) to what remains essentially a political and bureaucratic challenge.

Even more basic is an underlying substantive challenge, or 'strategic deficit', that tends to affect the various dimensions of international response to ongoing peace processes. For all the planning tools in capitals and headquarters and the field, there is still no consistently reliable mechanism for international actors to forge a well-informed, genuinely shared, overall strategy for peace consolidation in particular countries, which would in turn shape the contours of their respective engagements and the relative utility of instruments like mediation.

This remains problematic independent of different views of how decisively post-conflict authorities (or their citizens) should themselves determine grand strategies for peace consolidation. Only in rare circumstances will post-conflict national authorities have anywhere near enough leverage, or their own unity of effort, to exert real discipline on international actors – so the challenge remains in terms of strategy and coherence. Indeed, this challenge is arguably heightened by the contemporary preference for negotiated settlement (rather than military victory or defeat), which necessarily produces complex outcomes with commonly high degrees of irresolution. That further mediation may be required is unsurprising. The challenge remains to render it, along with the panoply of other international instruments and tools, more strategically and enduringly effective.

4. The Peacebuilding Commission, as it matures as an institution, is worth watching in this regard, as it appeared to have played this role quite effectively in Burundi in close cooperation with the Executive Representative of the Secretary-General on the ground.

Power sharing, transitional governments and the role of mediation

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Power-sharing transitional governments are common ingredients of peacemaking and peacebuilding efforts. Power sharing guarantees the participation of representatives of significant groups in political decision-making, and especially in the executive, but also in the legislature, judiciary, police and army. By dividing power among rival groups during the transition, power sharing reduces the danger that one party will become dominant and threaten the security of others. Liberia, Burundi, the Democratic Republic of Congo, Kenya, Nepal, Iraq and Afghanistan are examples of countries where power-sharing transitional governments were responsible for guiding the complex processes of demobilisation and re-integration of combatants, return of displaced persons, preparation of elections and the negotiation of new constitutions.

This paper focuses on the sharing of power in the transitional executive and legislature, and argues that the international community has an important role to play in assisting power-sharing governments to manage their countries' political transition. Members of power-sharing transitional governments need to resolve major disagreements among themselves, which were not settled in peace agreements. Also, interest groups excluded from the peace talks may demand to enter the political arena before elections are held and challenge the legitimacy of transitional governments led by wartime elites. Both the sharing of power among former enemies and the demands of excluded opposition groups are difficult to manage and are potentially conflict-provoking. There is a role for external actors therefore, to assist transitional power-sharing governments in managing these various challenges.

> *"Both the sharing of power among former enemies and the demands of excluded opposition groups are difficult to manage and are potentially conflict-provoking."*

The international community seems to underestimate the need for third-party political engagement during transitional periods. Greater attention is paid to talks leading to peace agreements, while the negotiations taking place during the transitional period are not always equally supported. The fact that a government of national unity is in place is often seen as the return to 'normality' and as the beginning of reconstruction and other 'post-conflict' activities. The skills deployed during transitional periods do not adequately include those required for mediation and continued political engagement. This approach reflects the exhaustion of international actors following lengthy peace talks, and the hope that peace agreements will bring the 'end' to the mediation process and the beginning of something significantly different.

1. The author would like to thank for their comments: Elizabeth Cousens, Susanne Gentz, Caroline Johnigk, David Petrasek, Meredith Preston McGhie, Michael Vatikiotis and Celine Yvon.

This approach is unfortunate given that the track record of transitional power-sharing governments shows that very often they require substantial support to achieve their goals.

Transitional power sharing and third-party engagement

Third-party political engagement in transitions is about facilitating dialogue among the partners of power-sharing governments, who typically have many unresolved issues to discuss, while also mediating between power-sharing governments and other important political actors who demand representation and influence in the transitional period. The task of facilitating negotiations among the parties is not completed with the signing of agreements and needs to continue through the transitional period.

In addition to offering much-needed security guarantees, the role of third parties is to encourage, and pressure when necessary, national leaders to implement joint agreements with their former enemies and to reach out to non-signatories of the peace settlement. Convincing domestic elites to join a single, national-level political process is not a simple task. It requires the investment of considerable political energy by external actors. Once in place, power-sharing governments tend to resist the continued intrusion of third parties in their affairs. They especially resist outside involvement when they use power-sharing transitions as opportunities to solidify their power bases and construct institutions that promote their interests in the long-term. External involvement is particularly bothersome to the power-sharing elites, when it advocates for expansion of political inclusion and thus for the dilution of their privileges.

However, excessive interference or inappropriate contribution of external actors in the political process can have multiple negative consequences. Instead of encouraging national leaders to initiate inclusive political processes, external actors often prevent adequate consultation by imposing deadlines related to their own timetables and interests. They favour the participation of certain political groups and leaders over others based on their own interests and understanding of a country's political realities, and they impose their favourite models of consultation over those derived from national political tradition. Furthermore, external actors inevitably make assumptions, which are not always accurate, about a given society and the 'desired' or 'appropriate' outcome of its political transition. It is therefore important that national leaders are in the driving seat of transitional politics, with external actors, when necessary, pushing for inclusive political processes and for the expansion of political participation.

"External involvement is particularly bothersome to the power-sharing elites, when it advocates for expansion of political inclusion and thus for the dilution of their privileges."

This paper makes three arguments:
1) The transitional period is a continuation of the peace talks and, as far as possible, international engagement facilitating these talks should remain in place. Third parties should see power-sharing transitional governments as vehicles through which the parties continue talking and negotiating. Given that not everything is resolved in peace agreements, the transitional period is an opportunity for the parties to stay engaged.
2) Transitional periods are opportunities to expand participation beyond the signatories of peace agreements. Political engagement by third parties is often needed to bring non-signatory armed groups into the peace process, as well as to encourage power-sharing governments to allow unarmed opposition groups and the wider public to participate meaningfully in the transitional process.
3) Peace agreements should not include agreements on a country's long-term institutional arrangements. Long-term constitutions should ideally be decided through a transitional process that provides for wide-ranging elite discussions as well as public participation.

Transitional power sharing as an extension of peace talks

In transitional periods, peace talks continue in two main ways. First, efforts continue to bring into the political

process armed opposition groups who refused to sign the agreement. Second, the signatories of agreements continue to negotiate the many outstanding issues within power-sharing governments. Convincing non-signatories to join the peace process is a crucial goal for the transitional period and one that benefits enormously from the support of third-party mediation. By offering a share in power, transitional governments may succeed in drawing in non-signatories whose interests may have changed or who needed additional guarantees before joining the peace process.

For example, efforts continued in Burundi after the signing of the Arusha Peace Agreement in August 2000 to bring into the political process non-signatory rebel groups. In 2003, the largest non-signatory, the National Council for the Defence of Democracy (CNDD), joined the transitional government. Talks continued, and finally in September 2006 the last rebel group signed a ceasefire agreement. In the Democratic Republic of Congo (DRC) also, the war continued in the east of the country following the establishment of the transitional government in 2003 and efforts to bring rebel groups into the political process continue to this day. In both cases, the role of third parties in mediating between the transitional governments and the non-signatories has been indispensable.

The case of Iraq demonstrates the consequences of not bringing into the political process powerful, armed opposition groups. Iraq's transition from 2003 to the adoption of the constitution in late 2005 failed to provide for a meaningful dialogue among key political elites. This alienated the Sunnis and those Baathists who could have been co-opted in the new political reality at the early stages of the transition. The policy of de-baathification and the exclusion of former Baathists from the official political process left the transitional period with a legitimacy deficit for a substantial portion of the population. At each stage of the transitional process, the US and its Iraqi allies decided against wider inclusion in the political process, although alternatives existed which could have created a political space for dialogue. As a result of a narrowly led transitional process, the constitution adopted in 2005 was largely rejected by the Sunni population.

The second reason to see transitional periods as extensions of peace talks is that members of power-sharing governments continue to negotiate issues not addressed by the peace agreement. In Burundi, many important decisions on the peace process were reached after the 2000 Arusha agreement, including a ceasefire agreement reached only in 2003, and the country's constitution adopted in early 2005. Most power-sharing governments negotiate a number of outstanding issues, including disarmament and demobilisation of combatants, drafting electoral laws and establishment of electoral commissions, vetting state institutions, creation of a unified army and police, and writing new constitutions. These negotiations are rarely smooth. However, there is a perception within the international community that at this stage the mediation process has ended, and that different skills and types of intervention are needed.

It is true that simply sharing power among former enemies may promote moderate behaviour and encourage a positive-sum perception of politics. Especially when combined with third-party security guarantees, power sharing reduces the parties' security concerns. Their inclusion in the transition allows parties to test their opponents' commitment to respect interests other than their own. Through power sharing, the signatories of agreements continue talking, building trust, and offering assurances and guarantees to each other.

> *"It is important that national leaders are in the driving seat of transitional politics, with external actors pushing for the expansion of political participation."*

However, making power-sharing governments work is not a straightforward endeavour. Routine interaction and relationships among the parties are not yet established. The government partners share few, if any, common interests, have low expectations about their partners' reliability and are plagued by security fears. Power sharing is designed to make decision-making slow and consensus-based in order to reassure parties that they will be consulted on matters of importance. Given divergent interests

and effective veto powers by each party, transitional power-sharing governments usually fail to embark on reconstruction and reconciliation. They tend to stagnate and are often unable to take decisions.

Members of power-sharing governments may be under pressure from extremist elements within their constituencies who oppose compromise and the sharing of power with opponents. Thus, power-sharing institutions may foster 'outbidding politics', where extremist politicians within a group make radical demands on moderate leaders of their own group who participate in the government. In such cases, reaching joint decisions is extremely difficult, and leaders do not have strong incentives to move beyond the positions they held during peace talks. Given the many causes of stagnated power-sharing governments, it is crucial for third parties to remain engaged during the transitional period and to encourage governments to take decisions and move the transition forward. This is not easy, of course, as power-sharing governments rarely welcome such engagement.

Examples of deadlocked power-sharing governments abound. In Cambodia, the shared government between Hun Sen and Prince Sihanouk, created in 1993, was paralysed by fighting between the two prime ministers and ultimately fell victim to a coup in 1997. Liberia's power-sharing transitional government was marred by corruption scandals and lack of progress in key issues. Observers argue that the leaders of armed factions blocked disarmament until they received more government jobs. Although the government had a two-year mandate to restore basic services to the population, it spent several months debating the sharing of high-level posts within the transitional institutions.[2]

Similarly, in Burundi, it took more than a year even to install the transitional government due to the parties' disagreement on who should lead it. The stalemate was broken only when Nelson Mandela announced that Pierre Buyoya of the Union for National Progress (UPRONA) would remain president for the first eighteen months of the transition, with a Front for Democracy in Burundi (FRODEBU) member serving as vice-president, and that in the second eighteen months these roles would be reversed.[3] Finally, in Côte d'Ivoire, a year after the Ouagadougou Peace Accord of March 2007, little has been achieved on the two most crucial issues of the peace process: the 'identification' of the population, which will determine who is a citizen and has the right to vote; and the disarmament and re-integration of former rebels.

> *"A reason to see transitional periods as extensions of peace talks is that members of power-sharing governments continue to negotiate issues not addressed by the peace agreement."*

In addition to the above difficulties, the members of power-sharing governments are rarely cohesive and disciplined, which makes negotiations extremely difficult. In the DRC, the signatories of the Sun City Agreement did not have strong command and control over their military and political wings. There were parallel chains of command in the army, the former rebel groups, and the transitional civilian government. The transitional government included leaders with diverse and often competing agendas. Thus, although 'bringing everyone together in the ruling structures was designed to stop violent conflict, the trade-off was low governance efficiency and effectiveness'.[4]

Burundi demonstrates the importance of sustained international engagement in transitional periods. It also demonstrates, as is often the case in mediation in general, that a lot of muscle is required for an effective third-party role. Burundi's power-sharing transitional government was inaugurated in November 2001 and stayed in power until August 2005. Throughout the transitional period, South African and regional engagement in the peace process was key in bringing non-signatories into the process and pressuring all

2. International Crisis Group. "Rebuilding Liberia: Prospects and Perils". *Africa Report 75* (30 January 2004).
3. Curtis, Devon. "Transitional governance in Burundi and the Democratic Republic of the Congo", in *Interim Governments: Institutional Bridges to Peace and Democracy?* Karen Guttieri and Jessica Piombo (eds). Washington, DC: US Institute of Peace Press (2007): 179.
4. Curtis (2007): 191.

actors to advance the process. For example, in the discussions leading to the agreement on the new constitution in 2004, the role of international pressure and South Africa's sustained engagement proved indispensable.[5] The South African mediation applied sustained pressure to move the process forward, and regional summits of heads of state firmly endorsed agreements reached, thus leaving little space for manoeuvre by parties critical of these agreements and preventing future re-negotiation.[6]

Given all the challenges involved in transitional power sharing, there is an important role for third parties in urging political leaders to continue talking, to reach agreements on the many outstanding issues and to manage the challenges of spoilers. Unsurprisingly to those familiar with mediation efforts, this is a demanding role that requires coordinated and consistent political engagement at the regional and international levels. It may also be helpful to include specific mechanisms in peace agreements that can trigger the involvement of third parties in the transitional process when the transition is faced with particularly tough obstacles.

From power sharing to wider political participation

Given that transitional governments sometimes stay in power for several years and take decisions with long-term consequences, it is not surprising that opposition groups and the public demand to participate in these decisions. Following the signing of peace agreements, there are high public expectations for a new kind of inclusive and just politics. The public yearns for meaningful political changes, which, however, rarely come from power-sharing governments that tend to be concerned with maintaining the status quo and their grip on power.

Power sharing rewards those who engaged in violence during the conflict and allows them to enter politics in the hope that they will be co-opted by the political system. However, power-sharing governments may freeze wartime realities if they do not evolve to create political space for the expression of multiple interests. During the transition, it is not advisable or possible to hold only narrow, elite-based discussions behind closed doors. It often becomes increasingly difficult to maintain the rationale for narrow political participation until elections are held, because new political actors are empowered and demand that their interests be represented.

> *"Because leaders are guaranteed representation in power-sharing governments, they have few incentives to engage their constituencies in discussions on the future of the country."*

To manage these demands, transitional periods need to expand political participation beyond the signatories of agreements to include a wider spectrum of political groups, civil society and the public in discussions on the future of the country. A transitional process should ideally create political space for debate to take place outside the power-sharing government in order to facilitate the emergence of new leaders and the strengthening of civil society. This may gradually weaken the influence of wartime leaders and offer the opportunity for alternative voices to emerge. For these very reasons, however, expanded political participation is resisted by power-sharing elites, and can be very destabilising.

There are many reasons for third parties to encourage the expansion of participation and, when necessary, to pressure the members of power-sharing governments to allow it to take place. This section outlines four key reasons for this encouragement: improving perceived legitimacy of a power-sharing government, representing newly formed opposition groups, enabling the emergence of new leaders, and laying foundations for long-term institutional development.

First, following a peace agreement, the population is impatient for politics to open up and for public discussions on the future of their country to begin. The wartime leaders participating in government may lack grassroots support and be seen as competing to share the spoils of power rather than moving the country toward reconstruction and reconciliation. Also, because

5. Reyntjens, Filip. "Briefing: Burundi: a peaceful transition after a decade of war?" *African Affairs*, Vol. 105, No. 418 (2006): 121.
6. International Crisis Group. "Elections in Burundi: the Peace Wager". *Africa Briefing* (9 December 2004): 5–6.

leaders are guaranteed representation in power-sharing governments, they have few incentives to engage their constituencies in discussions on the future of the country. As a result, lack of public participation combined with the squabbles of a stagnating power-sharing government run the risk of disillusioning the population and leading to its disengagement from the peace process.

Burundi's transitional process provides an example of this challenge. The power-sharing government was the result of elite negotiations, and the participants in talks were those who had the capacity to carry out violent acts and did not necessarily command respect or have genuine public following. In the eyes of the public, the transitional government was about elites dividing the spoils of government. Overall, the transitional process was disconnected from the local population: 'elite power sharing did not strengthen the relationship between leaders and citizenry'.[7]

A similar phenomenon occurred in Nepal's transitional process, where until early 2007 the process focused on building elite consensus at the expense of wide political debate or public consultation. Significantly, there were no institutional structures to channel and process the results of public consultations.[8] The committee charged with drafting the interim constitution consisted initially of six men and did not include women, dalits or any minority ethnic members. The committee's enlargement following public criticism did not change its domination by the main political parties and the Maoists.[9] As a result, observers note that the lack of communication and consultation aggravated public frustration.[10]

> *When elites with interests in wartime structures retain power, they resist the processes of demilitarising and democratising politics.*

The second and related argument in favour of expanded political participation is that new political groups get organised in the transitional period, and demand representation, refusing to wait for elections to be held. These opposition groups know that important decisions with long-term implications are being taken in the transitional period and want to have a say in them. Even if power-sharing governments represented the key political and military groups at the beginning of the transition, they may lose popular support to new political organisations. Should the demands of these groups not be heard, due to a closed, non-transparent transitional process, there is an increased risk of violence.

Nepal came close to realising this unfortunate scenario in early 2007, when three weeks of violent protests in the country's south left two dozen people dead. The power-sharing deal between the mainstream political parties and the Maoists was based on the assumption that they represented most Nepalis. However, the protests of early 2007 demonstrated that the mainstream parties and the Maoists were actually not fully representative of society.[11] Demonstrators protested that the new interim constitution did not correct the domination of 'hill' Nepalis, and continued to reinforce age-old patterns of discrimination. For them, 'the "New Nepal" that politicians had promised looked suspiciously like the old one that was meant to have been consigned to history'.[12] Ultimately, the interim constitution was amended and the government and the Maoists managed to maintain a working relationship.

The third reason for expanding political participation in the transitional period is because power-sharing arrangements tend to prevent the emergence of new political leaders. As Chalmers writes about Nepal, 'the mainstream parties were relieved that, for all the drama of the April 2006 mass movement, it did not generate any new leaders, nor has it yet forced them to find new ways of conducting politics'.[13] However, this is detrimental to peacemaking and peacebuilding efforts: when elites with interests

7. Curtis (2007): 191.
8. International Crisis Group. "Nepal's Constitutional Process". *Asia Report 128* (26 February 2007): i–ii.
9. International Crisis Group (February 2007): 6.
10. International Crisis Group. "Nepal: Peace Postponed". *Asia Briefing 72* (18 December 2007): 12.
11. International Crisis Group (December 2007): 3.
12. Chalmers, Rhoderick. "Toward a new Nepal?" *Current History*, Vol. 106, No. 699 (2007): 161.
13. Chalmers (2007): 167.

in wartime structures retain power, they resist the processes of demilitarising and democratising politics. New political leaders need to emerge gradually, with interests not linked to wartime legacies so that they can deliver different messages and build political constituencies based on different interest structures. Change can rarely be delivered through those who benefit from the status quo.

Finally, a fourth reason for third parties to encourage power-sharing governments to open up the political space is that only such inclusive discussions can pave the way for long-lasting institutions which will accommodate diverse interests in a common state. This issue is discussed in the next section.

> *Only inclusive discussions can pave the way for long-lasting institutions which will accommodate diverse interests in a common state.*

Expansion of political participation in the absence of election is an extremely difficult and potentially destabilising undertaking, for two main reasons. The first difficulty is that power-sharing governments are not eager to create avenues for wide political participation, which allows opposition groups to influence decisions. Incorporating new views and interests in the political process disturbs the delicate balance of power negotiated in the peace agreement. The second difficulty is related to the question of who decides, in the absence of elections, what groups are to be included in the transitional political process and through what mechanism.

Some practitioners and academics argue that inclusive political processes should begin only after state institutions have been rebuilt and the rule of law established. Political inclusion in the early stages of the transition, very much like premature elections, can be destabilising. Political parties are newly created and have not yet built strong ties with their constituencies, state institutions are weak and cannot channel popular demands effectively, and the media are not moderate enough to report dispassionately on divisive discussions. Threatened elites eager to protect their positions and interests are tempted to use manipulative rhetoric to stoke fear and insecurity among the people, or to mobilise them against their opponents. However, this paper argues, political processes gradually expanded beyond those who sign peace agreements can prepare the ground for elections and contribute to lasting state institutions. Lengthy deliberation and gradual expansion of political participation before political competition moves to the ballot box, and before long-term constitutions are adopted, are more likely to lead to accepted electoral results and constitutions.

There is a very important role for third parties in the effort to expand political participation. Third parties need to advocate for wider participation because the members of power-sharing governments often have no interest in such efforts. The National Transitional Government of Liberia (NTGL) inaugurated in October 2003 demonstrates the attitudes of power-sharing elites. One rebel politician summarised the character of the NTGL as follows: 'this is an administration for warring factions. They control the government. People need to accept this reality. Civilians have no role in the cabinet, they are virtually voiceless'.[14] Due to the lack of accountability mechanisms during the transitional period, the members of the NTGL devoted more attention to the division of the spoils of the state than to making and implementing public policies.

In Nepal also, observers noted in 2007 that 'party leaders have shown little appetite for pluralism: the interim legislature will have no official opposition, royalist parties may be excluded from the Constituent Assembly and new parties will find it hard to register for elections'.[15] Also, in Somalia, most of the national reconciliation conferences convened since 1991 focused on hammering out power-sharing agreements for transitional central governments. In some of the conferences the agenda was reduced to the allocation of cabinet positions by clans and factions in typical sharing-the-spoils exercises.[16]

14. International Crisis Group (January 2004): 13.
15. International Crisis Group (February 2007): i–ii.
16. Menkhaus, Ken. "Mediation efforts in Somalia", in *Africa Mediators' Retreat Briefing Pack*, Centre for Humanitarian Dialogue (HD) (2007).

> *Third parties need to assist power-sharing governments to carry out the tasks entrusted to them, while helping them to manage the increasing demands for political participation.*

It is argued here that it is possible to compensate for the elite character of transitional power sharing by combining it with various forms of wider political participation. The political process can provide for inclusive decision-making mechanisms, such as joint commissions and working groups, mandated to work on various aspects of the transition: electoral laws and constitutional issues, rules governing the vetting of state institutions, the creation of a unified army and police, and the reform of public administration. In Mozambique, for example, negotiation and planning continued after the signing of the Rome Accord. Joint decision-making bodies such as the Supervisory and Monitoring Commission and the Ceasefire Commission gathered the key political actors and donors in a consultative process chaired by the Special Representative of the UN Secretary General. Other specialised commissions dealt with reintegration of former combatants, reform of the Mozambican defence forces and preparation for elections.

Political deliberation beyond the members of transitional governments can also take place in non-elected bodies, such as national conferences and constitutional commissions. In Afghanistan, for example, the Interim Government appointed by the Bonn Agreement in 2001 divided power among the most powerful elites with the exception of the Taliban. This government was succeeded by another power-sharing government in 2002, the Transitional Government, partly selected by a large gathering of hundreds of people, the Loya Jirga. Also, the country's constitution was drafted in the context of a wide public participation effort. Although marred by intimidation and manipulation, this did provide a corrective to the elite- based, power-sharing formula.

In the absence of elections, what mechanisms should be adopted to identify the participants of national dialogue and other public-participation efforts? How should the extent of inclusion and participation be defined? There are no perfect answers to these questions, and external actors can play an important role in facilitating the discussions on the eligibility criteria and decision-making procedures of consultative mechanisms. Inevitably, public-participation efforts following peace agreements and lengthy civil conflicts will be flawed and at least partially manipulated by elites. Adopting transparent selection and decision-making rules may go some way to increasing the public's influence in the political process. Also, relying on multi-step selection processes, led by credible national leaders and independent commissions, could be beneficial. However, these efforts are unlikely to overcome the inherently contentious nature of expanded political participation, and third parties should remain engaged to assist in managing these challenges.

Transitional periods, institution-building and constitutional negotiations

Constitutional discussions go to the heart of the most divisive issues facing a country: the structure of state institutions and the long-term sharing of power within them, the rights of minorities, and the state's obligations toward the citizens. Experience has shown that lasting and legitimate state institutions tend to result from lengthy deliberation among a wide range of national elites and from meaningful public participation.[17] The constitution-making process, including who has the right to participate and how decisions are taken, influences the content of constitutions, their legitimacy and the politics that follows their adoption.

Experience suggests that decisions on long-term constitutional design should not be rushed and

17. Kritz, Neil. "Constitution-making process: lessons for Iraq", testimony before a joint hearing of the Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Property Rights, and the Senate Committee on Foreign Relations, Subcommittee on Near Eastern and South Asian Affairs (2003), available at: http://www.usip.org/congress/testimony/2003/0625_ kritz.html; Samuels, Kirsti. *Constitution-Building Processes and Democratization: A Discussion of Twelve Case Studies*. Stockholm: International IDEA (2006), available at: http://www.idea.int/conflict/cbp/; Brandt, Michele. *UN Assistance to Constitution-Making Processes: The Cases of East Timor, Cambodia and Afghanistan*. New York: UN Development Programme (UNDP)/Bureau for Crisis Prevention and Recovery (BCPR) (2004).

> *In the absence of continued political engagement, it is likely that peace processes will be derailed or fail to achieve their stated objectives.*

should not be dominated by power-sharing transitional governments. If power sharing is to be enshrined in the long-term constitution of a country, it should result from inclusive and lengthy discussions during the transitional period. Long-term institutional arrangements should not be included in peace agreements. By deciding long-term constitutions, peace agreements miss the opportunity to lengthen the dialogue on constitutional options and to expand political participation beyond those at the peace-negotiating table. The Bosnian example shows the deficiencies of including long-term power-sharing arrangements in peace agreements. Agreements, then, need to define the processes through which political leaders will reach decisions on constitutional arrangements without actually defining the long-term constitutions themselves. Ideally, agreements should also include mechanisms for wide elite consultations and public participation in the transitional and constitutional processes.

There is evidence that constitution-making processes that exclude major constituencies usually lead to contested constitutions. Iraq is a relevant example. Observers have noted that the Iraqi constitutional discussions in the summer of 2005 were damaged by the time limitations imposed by the US and by the insufficient inclusion of Sunni Arabs in the deliberations.[18] In the October 2005 referendum, 78.6% of votes were in favour of the constitution. However, in the predominantly Sunni Arab governorates of Anbar and Salaheddin, 97% and 82% of voters respectively rejected the document. One could argue that the Sunnis would not have accepted the emerging Shia–Kurdish federal deal, even if a more inclusive and longer deliberation had taken place. However, observers note that the Sunni position had evolved to understand federalism as potentially being to their benefit. Morrow argues that, in August 2005, some leading Sunni Arab negotiators were sympathetic to certain models of Iraqi federalism, but could not support it without raising awareness among their constituencies on what these models entailed.[19] A longer process would have allowed political leaders to discuss this with their constituencies, as well as giving time for the Constitutional Commission to promote public awareness and education. However, this opportunity was missed.

Although experience demonstrates that constitutions adopted without extensive elite-level consultations and public participation are unlikely to last, 'to push for a more inclusive process is to challenge the longstanding structure of the state'. Often, 'a political elite unaccustomed to satisfying public demands will have to learn quickly to be more responsive without just making reflexive concessions that fail to produce an overall improvement in fairness'.[20] Observers noted in late 2007 that, in Nepal, 'no party paid more than lip service to calls for broader public participation in the constitutional process'.[21]

Similarly, in Burundi, real political debate on the future of Burundi and on economic and social issues had not taken place at the end of the constitutional negotiations.[22] The population remained poorly informed about the constitution and the upcoming elections, and debates on power sharing, accompanied by denunciations and bitter disagreements, created a climate of fear.[23] The new constitution was endorsed in a referendum in February 2005 by 92% of the voters, but 'holding a referendum at the end of the transitional process is not sufficient in terms of engaging the broader population in the peace process'.[24]

18. Morrow, Jonathan. "Iraq's constitutional process II: an opportunity lost". *Special Report 155*, United States Institute of Peace (November 2005).
19. Morrow (2005).
20. Chalmers (2007): 166.
21. International Crisis Group (December 2007): i.
22. International Crisis Group (December 2004): 2.
23. International Crisis Group (December 2004): 11.
24. Curtis (2007): 188.

Based on the above, the role of third parties in encouraging consultations with elites outside the power-sharing government and emphasising the importance of public participation is crucial. Of course, these decisions cannot and should not be imposed by external actors. However, there is an important role in advocating for wide participation in constitutional discussion and in mediating between the resistance of power-sharing governments to grant it, and the impatience of excluded groups.

Conclusion

This paper has argued for the continued political engagement of third parties following the signing of peace agreements and during the particularly volatile transitional periods. It has argued that third parties should see transitional power-sharing governments as vehicles for continuing the peace talks and has pointed out that many issues remain unresolved when agreements are signed. It has furthermore argued that it is unrealistic to expect power-sharing transitional governments led by wartime elites to put in place the foundations for stable electoral politics and long-lasting state institutions without consulting with other elites and without at some point including the public. Narrow coalitions will inevitably meet resistance from the wider population and new opposition groups.

For transition to lay the foundations for stability and pluralist political competition, power- sharing elites need to learn to listen to the public as well as to consult with a wider group of political competitors. Transitional processes that provide for the gradual expansion of political participation before competition moves to the ballot box and before long-term constitutions are adopted are more likely to lead to widely accepted electoral results and constitutions.

Given the multiple challenges transitional power-sharing governments face in taking joint decisions, bringing non-signatories into the peace process and managing demands for inclusion from the public and the unarmed opposition, the role of third parties remains indispensable. It has been argued that third parties need to assist power-sharing governments to carry out the tasks entrusted to them, while helping them to manage the increasing demands for political participation from various segments of society before elections are held. This is a challenging agenda for third parties, who often expend considerable financial and political resources to bring about the signing of peace agreements. It is especially demanding given the resistance of power-sharing elites to tolerate continued external intrusion in their affairs. However, in the absence of continued political engagement, it is likely that peace processes will be derailed or fail to achieve their stated objectives.

Using force to promote peace

Comfort Ero

2013

In the last two years, there has been a surge of military interventions in Africa including the deployment of new peace operations. It is part of a growing trend in the militarisation of civilian protection and even a shift from peacekeeping towards peace enforcement. Some African states and the African Union (AU) have pushed for more muscular peace operations, for at least three reasons: to fight Islamist insurgencies and prevent terrorism; to neutralise their political enemies; and to address growing frustration that traditional United Nations peace operations, even under Chapter VII of the UN Charter, have proven incapable of resolving African crises. Another important undercurrent is the desire, especially within the AU, to take the lead in responding to African crises. The international community (particularly the West) reluctant to deploy troops in Africa, has supported and even financed this more robust approach, especially when it has helped address its own security concerns. In other cases, Western countries have intervened directly in some crises, with or without the backing of African states, when they considered their national security to be directly threatened.

> *Unless military offensives against militias are accompanied by a campaign to address the conditions in which they flourish, UN troops will be fighting the symptoms, rather than the causes, of violence.*

Whatever the ultimate objective, this willingness to use force raises fundamental questions about its utility and how to appropriately balance it with the more important goals of mediating and building sustainable peace. Tensions between the use of force and mediation have long existed, but can the use or threat of force work as a tool to promote peace or does it always act as an impediment to it? Should we acknowledge that, in some cases, the threat or even use of force is needed to stabilise the situation and create space for dialogue, to encourage factions to respect the provisions of a peace deal, or to protect civilians? What are the dangers associated with using, or threatening to use, force? Is enough done at the political level to complement or shore up military interventions? Do such interventions lay the foundations for sustainable political solutions or are they no more than containment strategies? Tied to these questions is the challenge of resolving conflicts in such a way that external actors, particularly the UN and AU, do not become substitutes for the security services of weak governments, especially those with authoritarian tendencies.

This paper addresses these issues, drawing on several specific cases: the Democratic Republic of Congo (DRC), Mali, Somalia and the Central African Republic (CAR).[1]

1. This paper has benefited from extensive research conducted by my colleagues and discussions I have had in my capacity as Africa Program Director at the International Crisis Group (ICG). It does not cite those Crisis Group interviews, but has drawn on numerous conversations with a cross-section of national, regional and international actors involved in the cases discussed here.

Democratic Republic of Congo: An intervention brigade to protect a political process

For over 15 years, the DRC has hosted one of the UN's longest, and most expensive, peacekeeping missions. Despite some positive results, the country continues to limp from one crisis to another, particularly in the east.

The latest crisis started in late 2012 with the emergence of a new rebellion called "March 23" (M23). Failure to implement the 23 March 2009 peace deal between the government and the rebels as well as heightening ethnic tensions and Rwanda's continued interference have led to yet another insurrection in eastern Congo. This crisis created the risk of regional conflict and it has raised questions about the utility of long-term peacekeeping, the efficacy of international efforts to manage conflict, and the equivocal role of a government that was weakened by the flawed 2011 presidential elections but has remained central to resolving the crisis.

Using force to resolve crises in the DRC is not a new idea. In 2003, the Security Council authorised the French-led European Union force (Operation Artemis) to stabilise the Ituri region following a breakdown in security. Controversially, in December 2008, the UN also extended the mandate of its mission, the UN Organization Stabilization Mission in the DRC (MONUSCO), to support the Congolese army (FARDC) in its fight against eastern militias.

However, a real doctrinal rupture in peacekeeping occurred in late 2012. Failure to prevent the seizure of Goma by MONUSCO (despite a strong civilian protection mandate) and an incompetent and abusive FARDC prompted several African states (including the Congolese government) and regional organisations to push for the deployment of a so-called Neutral Intervention Force (NIF). It was a telling request that reflected frustration with the UN's repeated failure to maintain peace in the east as well as impatience with President Kabila's poor governance and Rwanda's continued interference.

A complicated round of negotiations culminated in the Peace, Security and Cooperation Framework signed in February 2013 in Addis Ababa by the Congolese government, regional states and organisations, as well as the AU, UN and other international partners.[2] The agreement defines a 'new deal' between the UN and the DRC in which a military unit within MONUSCO – the International Intervention Brigade – would pursue 'targeted offensive operations' against eastern militias. At the same time, the government would reform its army (one of its failed obligations under the 2009 deal) and implement governance reforms. The agreement also recognises that the crisis in eastern Congo is both a national and a regional one which requires the region to work together to promote development and end impunity.

> *"The debate at the UN Secretariat should never have been posited as 'either/or'; rather, it should have been clear at the outset that any offensive action should be complemented by a political process."*

The use of the Intervention Brigade – including troops from Tanzania, South Africa and Malawi – stretches UN peacekeeping doctrine but may also be a realistic response to conventional peacekeeping failures, exemplified by the fall of Goma. Time will tell whether it can bring peace and provide the necessary military pressure to enable proper implementation of the February agreement. Underlying it are the laudable goals of protecting civilians and tackling the informal militias.

But it creates its own problems, particularly the use of UN and regional troops as surrogates for the government's failed security apparatus. There are clearly dangers involved in drawing UN peacekeeping missions into aggressive military operations that risk civilian casualties. Further, the use of force against armed groups in the Kivu region has repeatedly failed and cannot be a long-term response to local disputes fuelled by economic rivalries, land disputes and social grievances.

2. Negotiation efforts were also being pursued between the Congolese Government and the M23 in Kampala.

Military action may also detract from the vital, but more arduous, tasks of reconciling communities, encouraging political leaders to reform, improving governance, and building strong and inclusive institutions. Moreover, ruling elites as well as regional and major powers will be tempted to exploit more robust mandates for peacekeepers to try and wipe out groups they see as spoilers, criminals or terrorists but which, in some cases, represent communities with legitimate grievances. Military action, even where needed, can only be one part of a much broader, and more nuanced, conflict resolution strategy that is tailored to local conditions. Unless military offensives against militias are accompanied by a campaign to address the conditions in which they flourish, the Kivus, like other conflict zones on the continent, will remain unstable and UN troops will be fighting the symptoms, rather than the causes, of violence.

The role of the UN Special Envoy to the Great Lakes is part of a new, broader political strategy and Mary Robinson sees the brigade as playing a deterrent role in support of her political work. Growing political pressure on Rwanda, including criticism by the UN Secretary-General about continued interference in eastern Congo, has put Kigali in a defensive mode. The brigade could change the options for political settlement, but the battlefield outcome remains uncertain despite the August offensive against the M23. There are also concerns that Kinshasa's recent advances could temper its willingness to make concessions.

> *"The roots of Mali's problems lie less in terrorism or Tuareg demands than in years of exclusionary and dysfunctional governance."*

Mali: balancing military intervention with political dialogue

Recent conflict in Mali has posed a dilemma: how to resolve a crisis that is not just about the failure of domestic governance, but also involves the twin threats of transnational terrorism and organised crime.

For over two decades, Mali was ostensibly a model of Sub-Saharan democratic progress. The March 2012 military coup deposed President Touré but, following the threat of military action from the Economic Community of West African States (ECOWAS), the junta ceded power to a civilian authority. The coup was triggered by the army's abandonment of the north of the country in the face of a new Touareg rebellion led by the National Movement for the Liberation of Azawad (MNLA). The MNLA was driven by historical grievances and bolstered by an influx of well-armed fighters from post-Qadhafi Libya. The MNLA declared independence in April but was rapidly outflanked by its erstwhile Islamist allies led by Ansar Dine, an armed group with links to al-Qaeda in the Islamic Maghreb (AQIM), and its splinter groups including the Movement for Oneness and Jihad in West Africa (MUJAO).

There appeared to be little appetite for international military action and the insistence on political dialogue yielded only limited progress, with not all of Bamako's political class wanting to negotiate with the rebels. A special meeting on the Sahel during the September 2012 UN General Assembly agreed that military action would likely be required.

The regional and international response was made more difficult by the complexity of Mali's neighbourhood. There was division, and a lack of clarity, among ECOWAS Member States over its mediation (led by President Compaoré of Burkina Faso) and within West African political and security circles on the strategy which would best protect their countries from destabilization. Tensions emerged between Mali's military and political authorities, especially over ECOWAS' proposed deployment of 3,300 troops to restore stability and help the government recapture the north.[3] Bamako had differences with Algeria, its powerful northern neighbour, over the restoration of security in their shared border regions.

There were distinct policy options available. Firm support for military action against the terrorist groups in Mali did not sit easily with arguments for a negotiated solution. The former held no guarantee of victory, the

3. The deployment of ECOWAS troops was a major point of contention between ECOWAS and the Malian army, which did not want to see its monopoly on force diminished by the presence of regional troops. Similarly, interim President Traoré had previously expressed opposition to the presence of foreign troops in the capital.

latter might contain the violence but legitimise terrorist and criminal activities in the Sahel. Other UN Member States were divided over military intervention; the US, chastened by its experience in Afghanistan and Iraq, urged caution about intervening in another Muslim state, while France and some of Mali's neighbours leaned toward the use of force.

On 20 December 2012, Security Council Resolution 2085 authorised the deployment of the African-led International Support Mission to Mali (AFISMA) but, in a sign of scepticism about the appropriateness of an expensive peacekeeping mission in the midst of a significant terror threat, no timetable was set for recapturing the north. This would only take place after the training of AFISMA and Malian forces and the submission of a progress report to the Security Council. The uncertain approach seemed to question both the utility of force alone and the possibility of securing a political solution with powerful Islamist groups.

A sudden march southward towards Bamako by Islamist fighters in January 2013 prompted a rapid French military intervention. With the support of Chadian troops, the Islamists were ousted from major northern towns. Paris quickly declared its intention to end its military campaign and, as an exit strategy, pushed for the establishment of a peace operation led by the UN, along with much more rapid timelines than those anticipated for AFISMA.

The French intervention led to a more dynamic international response. It forced the region to accelerate AFISMA's deployment and the Security Council to draft a framework for a UN mission. But the prospect of an international operation in Mali raised questions about peacekeeping in a militarised, unstable environment where terrorist groups had not been fully neutralised and where there was no peace process, nor effective central government.

Significant doubts were raised in the lead-up to a Security Council decision on the mandate of the mission including whether it could create peace; support the national dialogue and electoral process; restore territorial integrity; stabilise liberated areas; fight terrorist groups; and contain transnational organised crime. Major differences emerged between the UN departments for peacekeeping and political affairs, with the latter particularly concerned about the absence of political strategies in peace operations. However, the debate at the UN Secretariat should never have been posited as 'either/or'; rather, it should have been clear at the outset that any offensive action should be complemented by a political process.

> *"Any military engagement must feed into a clear plan of action, even when opponents are not prepared to engage politically."*

In the end, there was clear consensus among Security Council members that there would be no UN combat operation in Mali or mission similar to the 'exceptional' brigade in the DRC. On 25 April 2013, Resolution 2001 recognised that the UN Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) would need a robust stabilisation mandate, carefully balanced with a strong political component focusing on the reconstruction of Mali's institutions; assisting with national dialogue and reconciliation; promoting and protecting human rights; as well as support for national and international justice. The framework for international action seemed right: the roots of Mali's problems lie less in terrorism or Tuareg demands than in years of exclusionary and dysfunctional governance.

Another impact of the French intervention was the change in the internal balance of forces that enabled both a political process and the organisation of the presidential election.[4] Following surprisingly peaceful polls in July and a run-off in August, the focus must now be on politics, rather than counter-terrorism or military strategy, including the re-establishment of state authority in the north and inclusive dialogue with all Malians.

4. The French intervention had a similar effect to the UK intervention against rebel forces in Sierra Leone in 2000, including in strengthening and improving the leverage of the UN mission.

According to the June 2013 Ouagadougou agreement, inclusive peace negotiations are scheduled 60 days after the new President appoints his government. However, stabilising Mali may well prove tricky; the situation remains volatile, particularly in the north. In late September, Arab and Touareg armed groups suspended, and later reactivated, their participation in the agreement. In October, two Chadian peacekeepers and one child were killed in a suicide bomb in the northern Kidal region. These events clearly indicate the tough struggle ahead, especially in the north where seasoned Islamist fighters continue hiding along the border.

The full deployment of the new UN mission, and political backing for it, will be critical to stability – a poorly equipped mission will be no match for the agile Islamist forces. The building up of MINUSMA, however, should not overshadow the political process, lest UN troops end up fighting on behalf of an incapable and unreformed government that may become unpopular in the north and over which the international community may have little leverage.

Somalia: fighting terrorism through internationally-backed AU peace enforcement

Military intervention – in essence, counter-terrorism – has sat uncomfortably alongside mediation efforts in Somalia. In fact, until recently, there has been less of the latter and more of the former.

It is possible that Somalia is currently facing its best prospect for peace and stability. Since late 2011, developments including an increasingly muscular AU force (AMISOM) working with various clan militias and assertive regional actors (particularly Ethiopia and Kenya) all backed by renewed international military support, have provided a significant opportunity to transform the dynamics on the ground. Al-Shabaab has faced severe setbacks including losing Mogadishu, the strategic port of Kismayo and other urban centres, although it retains an underground presence in these areas. The group has also been weakened by infighting between hardline and more moderate elements resulting in the breakaway of several large factions. Mogadishu is ostensibly more secure than it has been in twenty years, many are returning from the diaspora, and the economy is predicted to expand dramatically in 2013.

In August 2012, the selection of the new Federal Government of Somalia (FGS) brought an end to eight years of transitional institutions and has raised expectations: neither its President (Hassan Sheikh) nor its Prime Minister (Abdi Shirdoon) is significantly connected to Somalia's violent past and they have established a lean and technocratic government. They have defined a 'Six-Pillar' strategy focused on stability, economic recovery, peacebuilding, service delivery, international relations, and national unity. In September 2013, an optimistic international community pledged over $2 billion to support the recovery. However, the speed with which this will be translated into tangible support remains a concern, and anxieties about endemic corruption and weak government institutions continue.

"Military intervention – in essence, counter-terrorism – has sat uncomfortably alongside mediation efforts in Somalia."

But Al-Shabaab has shown itself capable of continuing a classic insurgency, hitting hard in urban areas and beyond the Somali border – witness the horror of Nairobi's Westgate Mall attack. Without AMISOM, backed by the UN Security Council (particularly the US and UK), previous transitional governments and the current FGS would have collapsed. But AMISOM cannot eliminate Al-Shabaab; it is overstretched and up to 3,000 troops (more than in any UN peacekeeping operations) have been killed. Al-Shabaab has reorganised for a long guerrilla campaign and now appears to be led by the hardline Ahmed Godane.

Disputes between the FGS and local clans allow Al-Shabaab to maintain its capacity to hit government officials and high-profile targets. A dispute over the administration of newly recovered Jubaland (the three southern provinces) put the FGS on a collision course with internal and regional allies (particularly Kenya) until an Ethiopian-brokered agreement created an Interim

> *The preference for security measures has made it difficult to find ways to shift the most fragile societies towards sustainable peace.*

Jubaland Administration in August.[5] However, continued regional intervention has allowed Al-Shabaab to occupy the nationalist high ground, making the government look both helpless and beholden to neighbouring states.

This raises important questions about the regional and international effort to stabilise Somalia. The government and its partners – in particular the US, the UK and Turkey as well as Gulf and Muslim states – need to articulate clear common goals that extend beyond their own narrow security interests. After six years of AMISOM operations (and, prior to that, Ethiopia's unilateral intervention in 2006 as well as Kenya's intervention from 2011), coupled with extensive US military assistance, the approach, while delivering some tangible results, is evidently not sufficient. The Somali security sector, which costs hundreds of millions of dollars and has been paid for by the international community since 2000, has been ineffective against Al-Shabaab and has exacerbated instability. The policy of 'uprooting terrorism' has arguably radicalised some Somalis into backing a group – Al-Shabaab – that they perceive as liberators against foreign intervention.[6]

The prevailing consensus, at least in the short term, seems to be to take the fight to Al-Shabaab. Following the September attack in Nairobi, there have been calls for increased Western and AU support to the FGS.[7] On 4 October, the US Navy SEALS responded with a dramatic raid on the Somali coastal town of Barawe. Somalia will require sustained international security assistance for years. AMISOM will continue to be essential, alongside the new UN Assistance Mission (UNSOM), which began operating in June 2013 with a focus on strategic, political and peacekeeping advice to the FGS and AMISOM, as well as state building.[8] An eventual exit strategy will also hinge upon successful security sector development. However, stabilisation requires robust political outreach including nationwide negotiations (especially on federalism), power sharing, socio-economic development, and improved governance.

Somalia's immediate threat may appear to be Al-Shabaab and terrorism, but its long-term challenge will be to agree on a new political dispensation that accommodates the various parts of the country. AMISOM and the fledgling security forces must be complemented with much more investment in rebuilding and ensuring institutions are accountable. The lesson of military interventions, particularly in Somalia, is that they should support a political process. Any military engagement must feed into a clear plan of action, even when opponents are not prepared to engage politically.

The Central African Republic: many forces, but no leader

If ever there was a case for an approach combining sustained military pressure, mediation, and transitional state-building, the Central African Republic (CAR) must be it. But the international response to the March 2013 coup has, to put it mildly, lacked decisiveness. Diverging interests and competition – initially between the Economic Community of Central African States (ECCAS) and South Africa after the latter's disastrous unilateral intervention, and between ECCAS and the AU to take the lead in resolving the crisis – have complicated regional action.[9] The Central African Republic hosts a number of foreign troops but none appeared able, or even willing, to step in.

Fragility, poor governance, coups, civil war, poverty and instability have characterised the Central African Republic's 53 year history. In December 2012, the Seleka rebel coalition made swift advances southward, threatening the capital Bangui and the government of

5. In 2009, the Government of Kenya devised a plan to create a regional administration in the Somali province bordering Kenya as a buffer between it and areas controlled by Al-Shabaab. This included training anti-Shabaab militias drawn from the Jubaland clans to help remove the group from Kismayo. International Crisis Group. "The Kenyan Military Intervention in Somalia". *Africa Report 184* (15 February 2012): 2.
6. See also De Waal, Alex. "Getting Somalia right this time". *The New York Times* (21 February 2012).
7. In a letter to the Security Council on 14 October, the UN Secretary-General called for enhancement of the Somalia National Army and AMISOM capacity.
8. UNSOM has a hugely ambitious mandate and will integrate the many UN agencies active in Somalia, acting as 'a single door to knock on'.
9. International Crisis Group. "Central African Republic: Priorities of the Transition". *Africa Report 203* (11 June 2013).

> *Military intervention and pressure is important, but it must be complemented by intervention encouraging credible state institutions to develop.*

President Bozizé. At Bozizé's request, Chad provided urgent military reinforcements while ECCAS led international mediation. At a meeting on 21 December in N'Djamena, Chad, a roadmap to resolve the crisis was agreed. In January 2013, negotiations took place in Libreville, Gabon, under the aegis of ECCAS. The Libreville talks went well. Bozizé stated that he was ready to negotiate and to establish a government of national unity; he also pledged not to run for a third term in the 2016 presidential election. ECCAS encouraged Bozizé to make further concessions, and he agreed to hold legislative elections within a year. However, it did not all go the rebels' way: they secured neither the immediate departure of Bozizé nor the position of Prime Minister, which was granted to the democratic opposition.

However, in March 2013 a new putsch by the rebels led to Bozizé's fall. The coup was hardly surprising: the Libreville agreement had neither a monitoring component nor an enforcement mechanism. Since March, the country has seen worsening security and a huge humanitarian crisis, along with widespread human rights abuses. The state is largely absent. Seleka's rebellion has also stoked previously dormant inter-communal tensions, mostly between Christians and Muslims, while the movement itself is increasingly divided.

Regionally, there has been an uneasy mix of de facto recognition of the new dispensation with a transitional framework established under international supervision. The international community, particularly the UN and France, has pursued the all too familiar 'wait-and-see' approach; the slow pace of decision-making was symptomatic of its inability to think more innovatively. Meanwhile, the situation on the ground kept deteriorating.

The CAR's former colonial power, France (already deeply engaged in Mali) appears to have little appetite to become directly drawn into the crisis. It has a small force in Bangui focused on securing the airport and its local interests, but it prefers an African response. An increasingly assertive AU wants a prominent role in resolving the crisis. French-sponsored Security Council Resolution 2121 (10 October, 2013), therefore, reinforces and widens the mandate of the UN Integrated Peacebuilding Office in the Central African Republic (BINUCA) and calls for the establishment of an AU-led international support mission (MISCA).

On paper, the resolution fulfils the political and military requirements necessary to prevent further deterioration of the situation and attempts to restore the functioning of the state including judicial, economic and social reforms along with measures aimed at re-establishing security and public services as well as organising elections. Also vital are much-needed human rights monitoring, security sector reform and disarmament, demobilisation and reintegration. But will this latest resolution be implemented quickly enough? There are concerns that the AU force that should back the transitional agreement is unlikely to be operational before 2014, far too late to reverse the country's descent into lawlessness. The crisis in CAR is more than just insecurity in Bangui and other major regions; national, regional and international responses need to focus on a comprehensive political and development agenda, recognising that a weakened interim government needs a protective security umbrella to begin these tasks. Crucially, ECCAS needs to ensure rigorous monitoring of the Libreville agreement and follow-up commitments.

Conclusion

A combination of politics and the use of force is currently underpinning external engagement in Mali, the DRC, and the CAR. In the end, the UN resolution on Mali struck a balance between, on the one hand, security and, on the other, politics and dialogue – although it remains to be seen whether the UN mission will be able to maintain it. The crisis in eastern Congo severely tested international capacity to devise prescriptions that can realistically avert a regional crisis, but it also

creates a dangerous path: the UN provides security for weak governments, in effect leading the international community to preserve poor state leadership and contribute to its militarisation. The weaker these states get, the more dependent they become. Having been compromised in this way, the UN can lose its reputation as an honest broker which is able to mediate in order to end crises. The preference for security measures (such as those on display in the DRC and Somalia) has made it difficult to find ways to shift the most fragile societies towards sustainable peace.

Military intervention and pressure is important, but it must be complemented by tailored political intervention that encourages credible state institutions to develop. Fragile countries, such as the CAR, need ongoing security support as well as a framework to properly follow up on peace agreements. These are resource intensive interventions; they cannot be successfully achieved on a shoestring, nor can they be sustained without both military and diplomatic support.

Notes on contributors

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Fatou Bensouda is the Prosecutor of the International Criminal Court (ICC) since 2011. Between 1987 and 2000, she was a civil servant in the Republic of the Gambia, serving notably as Legal Secretary, Attorney General and Minister of Justice, in which capacity she was Chief Legal Advisor to the President and Cabinet. Her international career began at the UN International Criminal Tribunal for Rwanda, after which she joined the ICC as the Court's first Deputy Prosecutor. In addition to several honorary doctorates, Prosecutor Bensouda has received the International Court of Justice International Jurists Award (2009), the World Peace Through Law Award (2011), the American Society of International Law Honorary Membership Award (2014), the XXXV Peace Prize by the UN Association of Spain (2015) and the Praeis Elit Award (2015). Prosecutor Bensouda has been listed as one of the 100 Most Influential People in the world by *Time Magazine* (2012); one of the Most Influential Africans by *The New African Magazine*; one of the Leading Global Thinkers by *Foreign Policy* (2013); and by *Jeune Afrique* as one of 50 African women who, by their actions and initiatives in their respective roles, advance the African continent (2014 and 2015).

Elizabeth Cousens

Dr Elizabeth Cousens is Deputy Chief Executive Officer of the UN Foundation. From 2009 to 2014, she served at the Permanent Mission of the United States to the UN, notably as Ambassador to the Economic and Social Council and Alternate Representative to the General Assembly. Dr Cousens led US diplomacy at the UN on human rights, humanitarian, social and environmental issues; served on the boards of agencies, funds, and programmes; and was the US representative to the Peacebuilding Commission. She was sherpa to Ambassador Susan Rice for the UN Secretary-General's High-level Panel on Global Sustainability, and lead US negotiator on the Post-2015 Development Agenda. She has served with UN political missions in Nepal and the Middle East and worked as an analyst in conflict zones, including Bosnia and Haiti. Her prior experience includes Director of Strategy for the Centre for Humanitarian Dialogue (HD); Vice President of the International Peace Institute; and Director of the Conflict Prevention and Peace Forum. She holds a DPhil in International Relations from the University of Oxford, and a BA in History and an Honorary Doctorate from the University of Puget Sound. She has written widely on conflict management, peace processes, state-building, and the UN.

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Ambassador de Soto, a Peruvian diplomat, held senior positions at the United Nations from 1982 to 2007. He was the UN Special Coordinator for the Middle East Peace Process and the Secretary-General's Envoy to the Quartet (2005-2007), the Special Representative for Western Sahara (2003-2005), and conducted the 1999-2004 process leading to the April 2004 referendums on a UN plan for settling the Cyprus problem. Earlier he was Assistant Secretary-General for Political Affairs, responsible for the Americas, Europe, Asia and the Pacific (1995-1999), during which time he was Special Envoy for Myanmar. As the Secretary-General's Personal Representative for the Central American Peace Process, he led the 1990-1991 negotiations that produced reforms to end the 12-year war in El Salvador. He is a member of the Global Leadership Foundation and a Senior Fellow at the Ralph Bunche Institute in New York. He teaches conflict resolution at Sciences Po in Paris.

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Sara Hellmüller

Sara Hellmüller works as a Senior Researcher and Senior Program Officer in the Mediation Program at swisspeace. She is the regional focal point for Syria and also in charge of the annual Certificate of Advanced Studies (CAS) course on National Dialogue and Peace Mediation. Sara holds a PhD in Political Science from the University of Basel. Her doctoral research focused on how the interaction between local and international peacebuilding actors in the Democratic Republic of Congo (DRC) influences the effectiveness of their programs. In 2013, she was a visiting scholar at the Saltzman Institute of War and Peace Studies at Columbia University in New York and an affiliate doctoral student at the University of Bunia in Ituri (DRC). Before joining swisspeace, she worked with the UN Development Programme in eastern DRC, the Swiss embassy in Nigeria and with local NGOs in Mongolia and South Africa. She holds a first MA in International Relations from the Graduate Institute of International Studies in Geneva and a second MA in Law and Diplomacy from the Fletcher School at Tufts University in Boston. Sara has a certificate in mediation from Mediation Works Incorporated in Boston.

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Thant Myint-U

Dr Thant Myint-U is a member of the National Economic and Social Advisory Council of Myanmar, a Special Advisor at the Myanmar Peace Centre, and the Founder and Chairman of the Yangon Heritage Trust. He is a former Fellow of Trinity College, Cambridge, where he taught modern history for several years. He has served in three United Nations peacekeeping operations, in Cambodia and the former Yugoslavia, as well as with the United Nations Secretariat in New York, notably as the Chief of Policy Planning in the Department of Political Affairs. He is also the author of three award winning books, most recently *Where China Meets India: Burma and the New Crossroads of Asia* (2012).

Jacqueline O'Neill

Jacqueline O'Neill is the Director of the Institute for Inclusive Security, a Washington DC-based organisation which promotes the inclusion of women in peace and security processes around the world. She is responsible for policy, advocacy and research programs. She oversees all regional initiatives (Afghanistan, Myanmar, Pakistan, South Sudan, Sudan and Syria) as well as Inclusive Security's support to governments and civil society on the creation and strengthening of national, cross-agency strategies and action plans. Ms O'Neill also advises and trains military, police, and civilians serving with NATO, the UN, the US military, and others. She writes and speaks frequently about inclusion in peace and security processes, including through testimony before US and Canadian Senate Committees. Previously, Ms O'Neill was a policy adviser to Canada's Secretary of State for Asia-Pacific. Along with former Lt General Roméo Dallaire, she helped found an initiative to address the issue of child soldiers. Before joining Inclusive Security in 2006, she was concurrently at the UN Mission in Sudan and at Khartoum's Ahfad University for Women. Originally from Canada, she has a Master's in public policy from Harvard's Kennedy School of Government and a Bachelor of Commerce from the University of Alberta.

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Julia Palmiano Federer is a Program Officer in the Mediation Program at swisspeace, where she is conducting her doctoral research in the framework of the Swiss National Science Foundation-funded project, 'Are mediators norm entrepreneurs?' Her doctoral research analyses the role of mediators in norms diffusion, specifically in the contexts of the peace processes in Myanmar and the Philippines. She has also worked on swisspeace's activities supporting the Myanmar peace process for the last two years. Before joining swisspeace, she interned with the United Nations Office for the Coordination of Humanitarian Affairs, Human Rights Watch and the Centre for Humanitarian Dialogue. She has also worked as a Research Assistant for the Political Science Department of the University of British Columbia and as a Project Assistant for the Department of Foreign Affairs, Trade and Development of Canada.

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Dr Katia Papagianni is the Director for Policy and Mediation Support at the Centre for Humanitarian Dialogue (HD). Her work focuses on the design of peace processes and, more specifically, on national dialogues and constitution-making processes. At HD, she has supported peace processes in several countries, including Liberia, Libya, Syria, Myanmar, the Philippines and Ukraine. She was seconded by HD to the United Nations in Yemen as an expert on national dialogue processes and, in that capacity, shared comparative insights on the preparation and structure of national dialogue efforts. Before joining HD, she worked for the National Democratic Institute, the Organization for Security and Cooperation in Europe, the UN Office of the High Commissioner on Human rights, and the UN Development Programme. Her experience includes work in Russia, Bosnia and Herzegovina and Iraq. She holds a doctorate in political science from Columbia University, a Master's degree in Public Administration from Princeton University, and a Bachelor's degree from Brown University. She has taught on peace- and state-building at Columbia University and the Geneva Graduate Institute for International Studies.

Antonia Potter Prentice

Antonia Potter Prentice has experience on a range of humanitarian, development, peacemaking and peacebuilding issues. She has lived and worked extensively in, and on, conflict and post-war environments. Increasingly specialised in women's empowerment, she has worked directly with women and peace process actors in countries including Afghanistan, Cambodia, the Democratic Republic of Congo, Libya, Indonesia, Myanmar, Nepal, the Philippines, South Sudan, Timor-Leste, Yemen, and at the global policy level. She has also published widely on these topics. Antonia co-founded the Athena Consortium as part of which she acts as Senior Manager on Mediation Support, Gender and Inclusion for the Crisis Management Initiative (CMI) and as Senior Adviser to the European Institute for Peace (EIP).

Juan Manuel Santos

Juan Manuel Santos is President of the Republic of Colombia since 2010. He was formerly Chief of the Colombian delegation to the International Coffee Organization (ICO) in London, and became Colombia's first Foreign Trade Minister. He has also been Finance Minister and Defence Minister. During this last position, he was in charge of leading the implementation of the government's Democratic Security Policy. President Santos created the Good Government Foundation (Fundación Buen Gobierno), and in 2005 founded the political party Partido de la U, now Colombia's largest political party. As a journalist he was a columnist and Deputy Director of the newspaper *El Tiempo*. He was awarded the King of Spain Prize and was president of the Freedom of Expression Commission for the Inter American Press Association (IAPA). He has published several books, including *The Third Way*, co-written with the former British Prime Minister Tony Blair, and *Check on Terror* (*Jaque al Terror*).

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