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Translating Mediation Guidance into Practice:

Commentary on the UN Guidance for Effective Mediation by the Mediation Support Network

Foreword by Jimmy Carter

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Foreword

By Jimmy Carter

The July 2011 UN General Assembly resolution on strengthening mediation in the peaceful settlement of disputes was an important demonstration of support for mediation by the international community. The Guidance for Effective Mediation, called for in the resolution and subsequently developed by the UN, is a useful reference document for mediation practitioners and the broader policy community. *Translating Mediation Guidance into Practice,* developed by the NGO members of the Mediation Support Network (MSN), expands on the guidance. It provides examples of effective and ineffective mediation practice in conflicts around the world.

The commentary highlights a number of the most challenging issues in the field of mediation today. One of these is the question of coordination among mediators. In recent years, there has been an increase in would-be governmental and nongovernmental mediators involved in conflicts worldwide. My experience has demonstrated the importance of coordination and a clear division of labor between mediators, working under the umbrella of a lead mediator. In my work with The Carter Center we have played both roles, leading on some conflicts and working under the umbrella of other mediators, often UN-backed, in other contexts. When this type of coordination is at its most effective, the problem of overlapping mandates can be reduced. In addition, different types of mediators, including local and international NGOs, states, and multilateral organizations, can be deployed to bring a variety of conflict stakeholders into mediation processes, building constituent buy-in and creating quality peace agreements.

The need for effective coordination and inclusive mediation efforts also points to the importance of bringing all major conflict actors into mediation processes, wherever possible. The trend of proscribing terrorist groups, sometimes including large organizations that are significant conflict actors, has made mediation more difficult. Placing such organizations beyond the pale of diplomacy complicates the search for political solutions to armed conflicts. Often these marginalized groups can end up with the desire to undermine any agreements reached. While it may be necessary and appropriate for states and multilateral organizations to sanction certain organizations, it also is important to maintain channels for dialogue.

This commentary is an important tool for fostering further discussion of these issues within the international community, while providing useful recommendations for better mediation practice.

Executive Summary

The Mediation Support Network (MSN) is a network of primarily non-governmental organizations (NGOs) that support mediation in peace negotiations. During their 2012 meetings, MSN members discussed and reflected on the "UN Guidance for Effective Mediation". The aim of this document is to formalize and catalogue these reflections into a consolidated commentary for the wider mediation and peace policy community, focusing on how to translate the UN Guidance into practice. Rather than being a comprehensive commentary, this document therefore focuses on certain issues and cases that seem pertinent from the MSN perspective.

MSN warmly welcomes the UN Guidance for Effective Mediation. The document helps to clarify the UN's vision of mediation and outline how mediation can be used to reduce violent political conflict. The UN Guidance for Effective Mediation is helpful in terms of setting standards and providing broad orientation to the mediation community. The key challenges involved in putting these recommendations into practice, however, have to be addressed on a case by case basis. Various mediation challenges are listed below. We also present numerous case studies illustrating the challenges, and how they were dealt with. The aim of these case studies – some of them specifically focusing on the NGO role in mediation – is to help translate the UN Guidance into effective practice. From the MSN discussions and the cases that were examined, the following points stand out most prominently:

Mediation needs to be professionalized: Supporting parties in negotiations and designing effective peace processes is a highly complex endeavor. The personal reputations and contacts of high-level actors are important, but insufficient. Teamwork, trained and capable mediators, topical experts, and persons who can engage with armed non-state actors and civil society are vital for the long-term effectiveness of mediation. The MSN therefore fully endorses the UN Guidance's call for greater efforts in mediation training, networking, and research, as well as for work to make the policy environment more favorable for mediation. Careful analysis is needed before any mediation action, and this kind of analysis and strategizing requires the long-term development of institutional and human capacity. The UN Guidance's definition of mediation is helpful in differentiating mediation from other forms of conflict intervention, such as high-powered diplomacy.

Inclusivity is essential, but not easily implemented: There is a strong and legitimate call for making mediation processes more inclusive, with regard to the inclusion of a range of actors (e.g., marginalized groups, women, religious actors, etc.) and with regard to the content of a peace agreement. However, mediators often face pressure to reach a minimum agreement quickly, especially when hostilities are ongoing. This can make it particularly difficult to reach more inclusive, and thus more complex, agreements. Proscription policies may also minimize inclusivity, and mediation actors should strive to find pragmatic means of overcoming these obstacles. Generally, it is more effective to convince the powerful actors sitting at the table of the benefits of inclusivity, as opposed to threatening or lecturing them, for example by quoting international standards that call for greater inclusivity. Inclusivity also entails efforts, outside the formal mediation process, to support dialogue between actors, so that they can better influence formal processes and sustain peace agreements once they are signed.

Coordination of mediators benefits from the inclusion of civil society: Coordination of mediators is difficult, but vital for effective mediation. Sharing information is often the first step in this direction. Local mediators are often forgotten, even if they have many comparative advantages and play a key role before, during and after formal peace processes. There are benefits to be gained from the inclusion of local and international NGOs in coordination platforms and response mechanisms, as they tend to increase the voice of a wider number of constituencies.

Introduction

The Mediation Support Network (MSN) is a small, global network of organizations that support mediation in peace negotiations.[1] During its meeting in March 2012 (New York), the MSN was consulted on the development of the "UN Guidance for Effective Mediation". In its meeting in October 2012 (Accra) the network then reflected on the UN Guidance[2]. The present document summarizes and expands upon these discussions in the form of a commentary on the UN Guidance. The UN Mediation Support Unit (MSU) is a member of the MSN, but was not involved in this commentary, as it played a key role in developing the original UN Guidance document.

The goals of the UN Guidance – to improve the professionalism of mediation, to push for greater inclusivity in peace processes and to increase coordination amongst mediators – are shared by the members of the MSN. If the UN Guidance is going to actually shape mediation

1 See the list of members at the back of this document or at *http://www.mediationsupportnetwork.net*

2 UN Guidance for Effective Mediation, Annex to the Report of the Secretary-General on Strengthening the Role of Mediation in the Peaceful Settlement of Disputes, Conflict Prevention and Resolution (A/66/811, June 25, 2012). *http://www.peacemaker.un.org/resources/mediation-guidance*

practice, rather than simply sitting on the shelf, it is important to reflect on how such guidance can be put into practice.

With the exception of UN MSU[3], USIP[4] and FBA[5], MSN members are non-governmental organizations. This NGO perspective, complemented by the governmental organizations' views, has shaped our analysis. MSN members tend to focus strongly on the importance of inclusivity, while realizing the difficulty of putting it into practice. The members often work with and support community organizations, establishing platforms for dialogue between polarized segments of local civil society. Such civil society platforms can support and feed into track 1 mediation processes, and can help hold societies together long after a peace agreement has been signed.

More rarely, NGO actors have been called upon to initiate and lead mediations.[6] Working with civil society calls for patience, cultural sensitivity, and the ability to listen to and engage with local actors, who are critical to supporting the processes of peace, reconciliation and justice. As supporting actors, the members of the MSN try to approach these needs in a less political, more flexible and creative manner. In particular, when it comes to conflicts between asymmetrical parties, the non-governmental MSN members may have greater latitude to engage with non-state actors than state and multilateral mediation actors have. NGOs are often more able to take risks than official actors, and are under less pressure to save face. At the same time, NGOs also have their weaknesses; for example, the dependency of NGOs on donors can lead to competitive behavior, and in the worst case can even lead to the taking on of more risks than can be managed.

The organization of this commentary matches that of the UN Guidance. Each section of the Guidance is briefly summarized and discussed, and then case studies are presented to highlight the way in which these fundamentals have worked in practice from the MSN perspective. Each section ends with a few key lessons learned. To make sense of this commentary, it is useful to read the UN Guidance beforehand. Due to the nature of MSN members and the cases we selected to illustrate various mediation challenges, this document should not be seen as a comprehensive commentary on the UN Guidance, but rather as food for thought in an ongoing discussion of how to translate guidance into practice.

3 UN Mediation Support Unit (UN MSU)

4 United States Institute for Peace (USIP)

5 Folke Bernadotte Acadamy (FBA)

6 For example, St. Egidio's mediation efforts in Mozambique in the 1990s, or HD's and CMI's mediation efforts in the Aceh peace process. So far, there have been no examples of NGOs successfully taking the lead in the implementation of a peace agreement.

Mediation Logic

One of the strengths of the UN Guidance is that it provides a definition of mediation[7]. While it is not the only definition used by practitioners, it highlights some key aspects of mediation. Mediation as defined by the UN Guidance can be situated somewhere between dialogue facilitation[8] and more directive third-party interventions. Mediation is thus a voluntary process, but the third party does provide structure and clear guidance on the process. Mediation is outcome oriented, yet the solutions come from the parties, and are not imposed by the mediator. The UN Guidance therefore makes a useful distinction between mediation and more forceful, interventionist approaches such as high-powered diplomacy, where the third party imposes the content of the peace agreement on the parties. While in practice the distinction may be hard to draw and third-party efforts may meander between dialogue facilitation, mediation and more directive approaches, conceptual clarity with regard to the differences between these approaches is useful when considering the implications of using more or less directive approaches. When communicating with others, it may make sense to have the flexibility to use appropriate labels other than "mediation", taking into consideration political and cultural specifics (e.g., "facilitation"). However, this should not hinder conceptual clarity in what one means and intends to do.

The UN Guidance highlights the logic of mediation, which is often still poorly understood in the field of international politics. Rather than sharing a worldview where actors are divided into "good guys" and "bad guys", or cooperative actors and spoilers, mediation logic argues that processes can be shaped to enable changes in relationships and behavior. This distinction between actor and action as well as between person and behavior[9] is essential for making effective use of the tool of mediation in order to minimize the use of violence in dealing with conflict. This does not mean that pressure should not be used in combination with dialogue; the crucial elements are legitimacy and the proportionality of the pressure used, as well as the need to design processes that seek solutions based on the respective actors' interests and needs.

7 "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." UN Guidance, p. 4.

8 A dialogue process is a process in which participants come together in a safe space to build trust and understand each other's viewpoint in order to develop new options to address a commonly identified problem. Dialogue does not primarily aim at decision making. Pruitt B., T. Phillip, *Democratic Dialogue – A Handbook for Practitioners,* Stockholm: Trydells Trycheri/UNDP, 2007. *http://www.undp.org/content/dam/undp/library/crisis%20prevention/democratic%20_dialogue.pdf*

9 This distinction is found in many cultures; it was widely disseminated in the book Fisher R., W. Ury, B. Patton, *Getting to Yes: Negotiating Agreement Without Giving In*, New York: Penguin Books, 1983.

Mediation Fundamentals

1. Preparedness

Summary

The UN Guidance outlines key principles for effective preparedness for mediation, which is seen as a prerequisite for effective mediation. The UN Guidance focuses on the selection of the chief mediator and the need for a qualified mediation team, as well as the necessary political, administrative and financial support structures. Preparedness includes analysis, strategizing, training, and management of financial and human resources.

Discussion

The UN Guidance on preparedness acknowledges that mediation is a professional activity that calls for teamwork and support structures, rather than seeing mediation as the ad-hoc activity of an individual high-level politician. This difference is fundamental, even if there is limited international consensus as yet on this understanding of mediation. Different actors (states, regional or international organizations, NGOs) engage in mediation processes, and their institutional capacity to perform effectively depends on various factors such as institutional set-up, organizational culture, resources, mediation role etc. Preparedness needs to be tailored to these various factors. Key considerations include:

Analysis and strategizing: It is essential that a mediation process is designed and tailored to the nature of the conflict.[10] Chief mediators do not generally engage in thorough conflict analysis themselves, but involving them in the process can help to better link the analysis to the subsequent mediation. The chief mediator's team's analysis is often also fed by experts, the wider mediation support community, local mediators, civil society and the research community more generally. In complex and multilateral organizations (e.g. the UN, EU or OSCE), information and analysis for the mediation team needs to be collected from geographical as well as thematic experts from both headquarters and local missions/delegations. The actors, issues, past peace processes, and the way in which the evolving context is shaping the conflict has to be analyzed before and during the entire mediation effort. Other ongoing mediation initiatives on track 1, 2, or 3[11] should also be mapped, their contribution to the peace processes analyzed, and possible strategies for multi-track efforts considered. If more than one third party is involved, processes of joint analysis and strategizing are beneficial in shaping a coordinated approach. Efforts should be invested in ensuring institutional memory, particularly when dealing with processes that extend over long periods of time.

Conflict analysis should never prevent the mediator from listening to the parties speak about the conflict from their points of view, but it does provide the mediation team with the basic knowledge to design a flexible strategy which can then be adapted as events develop. Mediators generally prepare more than one mediation process plan, in order to have some ideas for how to proceed if the preferred approach fails. Some of the challenges involved in preparedness include:

Mediator selection and mediator mandate: The chief mediator is the visible face of the mediation effort. The chief mediator is often not trained in mediation, but rather selected for his or her political reputation. The UN Guidance suggests that experience, skills, knowledge, and cultural sensitivity should also be considered as selection criteria. Three challenges are paramount. First, it is important to balance the need for a clear mandate and accountability on the side of the mandating organization with the need to leave the chief mediator enough freedom to mediate effectively. Second, the mediator must consult with the parties, in order to secure their mandate[12] for the process and to be acknowledged as an acceptable mediator. If not, the peace process will not be a mediation process, but some form of imposed, high-powered diplomacy, whose outcome may be less legitimate to the parties and thus less sustainable (see also the section below on consent). Third, if the UN is the mediator, the chief mediator must secure the support of the main international actors, including the P5 (China, France, Russia, UK, USA) and regional powers, or at least guarantee their non-interference in the mediation process.

Nature and composition of the mediation team: The chief mediator generally selects his/her own team. It is important to have clear role divisions between the chief mediator, who is the chief conductor of the orchestra and should not get bogged down in micro-management, and the mediation team, which incorporates the different roles of mediators (e.g. running committee meetings, developing process design options, crafting draft agreements), topical experts (briefing parties on content issues, assessing what is technically feasible), the secretariat (running the logistical side of the process), and on-site security. Depending on the nature of the mandating organization, it is also important that the mediator's team is given the space and framework to be able to coordinate and communicate with other actors of the same organization engaged in the same

10 Julian T. Hottinger, Peace Mediation Course 2013. See also: Brahimi L., S. Ahmed, *In Pursuit of Peace: The Seven Deadly Sins of Mediation,* Center on International Cooperation, 2008.

11 Track 1 is understood here as channels of communication between elites and leadership; track 2 between non-official, influential actors and opinion makers; track 3 between grass-root actors; and track 1.5 has been used to term processes that are a mix of Track 1 and 2.

12 On the different types of mandate, from the mandating organization and from the parties, see: Svensson I., P. Wallensteen, *The Go-Between, Ten Implications for Mediation Research and Practice,* USIP, 2010.

context, e.g. humanitarian or development actors. In order to assist the mediation team with access to specialized expertise when necessary, rosters and deployment mechanisms need to be developed, which are tailored to the respective mandating organization and possible requests from the field.

Capacity building, training and learning: More and better mediation strategizing capability needs to be developed, because while there are many mediators "on the market", there are not many good mediators with strong strategizing and process design skills. In order to mediate well and to carry out professional mediation support work, mediators and support staff themselves often need more in-depth mediation training and hands-on experience to build skills.

Besides providing research and training for mediators, mediation support has also developed in recent years to help mediation processes through capacity-building for parties, often working long before and after an actual mediation process. The parties' lack of knowledge and negotiation skills is one factor that can contribute to the failure of mediation processes. Often there is not a level playing field, as one actor is very experienced in negotiation techniques while the other actor has no idea of what to expect. Parties that are not adequately prepared for negotiations before they start a mediation process tend to stall or may refuse to participate. In such cases, the mediation team or mediation support actors can assist the parties in understanding the issues and developing the skills needed for an effective mediation process.

Financial and political support: Peace processes have failed due to unrealistic timeframes, lack of funding and lack of political support. In addition to the long term commitment of financial support, the international community should also be prepared to provide long-term political support to a mediation process. Developing a regional and international political consensus, so as not to hinder the mediation process, can be challenging (e.g. Syria). At times, contact groups and groups of friends have been useful to this end. Experience shows that mediation takes time and that it is rarely helpful to set deadlines (e.g. Darfur in 2006), even if deadlines can be used in specific cases, when used with extreme care and skill.[13] Generally, an approach of setting milestones instead of deadlines seems to be effective (e.g. Burundi 1998–2000 or Sudan North-South 2002–2005).

Case Study: Guinea Bissau

While Guinea Bissau is still going through a transitional phase and faces challenges regarding the upcoming elections in 2013, there are some useful lessons to be learnt about how one of the mediation actors engaged in preparedness in terms of actors, networks and expertise. The Economic Community of West African States (ECOWAS), the African Union (AU), and the UN worked jointly from 2009 to 2011 in order to restore the constitutional order after the military coup d'état.

What did the preparedness of ECOWAS look like in this specific case? When preparing for mediation in Guinea Bissau, ECOWAS drew on its long experience of mediation in the region. The mediation team was balanced, comprising of people not only with mediation experience, but also with technical skills, including legal know-how, and with access to in-depth analysis of the situation on the ground. Additionally, combinations of formal and informal networks were used to feed the teams' knowledge of the context. Through their zone bureaus and Early Warning Department, ECOWAS has a fairly elaborate regional conflict warning system that feeds into the mediation process, including relationships with civil society. In particular, the ECOWAS-supported West Africa Civil Society Forum (WACSOF) added regional civil society perspectives to the peace processes.

Preparedness in the case of Guinea Bissau also included a unified political stance from the international community as to the acceptable result. The condemnation of the coup d'état and the movement towards a one-year transition that would end in elections are examples. While room for improvement remains, the combination of an experienced and prepared team with good conflict analysis seemed to have been important in facilitating the transition process to date.

Key Lessons

Need to professionalize mediation: Of all the fundamentals in the UN Guidance the section on preparedness most clearly argues that mediation is a professional endeavor that necessitates training, research, analysis, and strategizing. Personal contacts between high-level politicians are critical, but alone they do not constitute an effective mediation process designed to bring about fundamental structural change. If this objective is to be attained, the mediation field has to be professionalized, in ways including the provision of a more supportive policy environment, research and longer-term training courses and coaching opportunities.

Need to be more sensitive to local realities: The goal of mediation is to assist conflict parties and local actors in dealing with their conflict, rather than imposing solutions, approaches and standards that do not fit the context at hand. Preparedness and best practices can be useful in generating ideas and supporting local actors. It is important that they remain sensitive to local, cultural approaches to mediation.

13 A six month timeframe was used in the Aceh Peace Process leading to the "Memorandum of Understanding" of 2005.

2. Consent

Summary

The UN Guidance considers consent by the parties to be an essential component for effective mediation engagements, as without consent the process would be imposed and therefore not mediation at all. Viewing consent as a fundamental principle for effective mediation is not new, but it does help to further distinguish mediation from the more traditional, diplomatic approach to peacemaking that uses "sticks and carrots" to make parties agree to imposed solutions.

Discussion

The concept of "sufficient consent" in the UN Guidance is pragmatic, acknowledging that fully-fledged consent is rarely attainable. The Guidance also provides ideas on how to analyze whether consent is sufficient or not, including an analysis of different constituencies, the potential impacts of limited consent, and the potential of excluded parties derailing the process. The following challenges merit further exploration:

Balancing dialogue and pressure: Given the principles of national sovereignty and non-interference that are enshrined in the UN Charter, it is not surprising that UN member states consider consent of the parties to mediation to be critically important. Indeed, one of the main advantages of mediation from the conflict parties' point of view is that it leaves them with a high degree of autonomy, as it is a voluntary process. At the same time, a certain degree of pressure is often used to induce parties to negotiate. Pressure may come from the local civil society (especially if that society is united) in the form of moral, public pressure, or it may come from neighboring states or the international community. For example, in the Sudan North-South Process, which regained traction in 2002, not long after the September 11, 2001 attacks, the Government of Sudan (GoS) was concerned that the US would use military means if the GoS did not show some sign of goodwill, for example by seriously engaging with the Sudan People's Liberation Movement/Army (SPLM/A). In 1996, after the coup d'état in Burundi, a regional group of neighboring states imposed economic sanctions on Burundi in order to press the Government of Burundi and the parties to negotiate a peace agreement, which happened between 1998 and 2000 in Arusha. Thus, both processes were "voluntary" to a certain degree, but pressure was also used to influence their calculations.

However, when is the amount of pressure so high that the parties' engagement in mediation can no longer be described as voluntary? One key factor to consider is whether the pressure is being used to get the parties to the table and remain there, or if it goes so far as to influence the content of the agreement. In cases where external actors shape and impose the content of the agreement (e.g., the Dayton agreement in 1995 regarding Bosnia), one could argue that it is no longer a voluntary process and thus no longer mediation, but some form of high-powered diplomacy. Similarly, in the Darfur negotiations in Abuja which led to an agreement in 2006, international donors largely imposed an agreement. They used deadline diplomacy, threatening the parties with a complete donor withdrawal unless they signed. Too much international pressure can jeopardize negotiations, or lead to agreements on paper which are not owned by the parties and the society behind them, and therefore cannot be implemented over time.[14]

Informed consent: What if a party's consent, or lack thereof, to a mediation process is not based on reliable information? Information asymmetry between the parties is often a challenge in mediation processes, since state actors are usually better informed about the nature of negotiations and mediation than armed non-state actors. Hence it is often especially crucial to provide information about the process, and what parties can expect from it, to non-state armed groups in particular. A lack of knowledge can lead to suspicion and refusal to engage in a process. Offering capacity-building training or technical assistance can help to overcome such differences before mediation begins, or even during the mediation process (see also the section on preparedness).

Case Study: Western Sahara

The case of the ongoing UN-led negotiations on Western Sahara, between Morocco and the Frente Polisario, illustrates the difficulties of dealing with consent that is partly the result of international pressure. For the time being, both parties seem to be participating in the mediation process for reputational reasons rather than out of a genuine interest in negotiations. Generally, any form of contact is better than no contact, so this is not necessarily negative. But one must avoid false expectations, have patience, and seek ways to ensure that the process is still beneficial to both sides, for example by working on confidence building measures.

Case Study: Rwanda

The Arusha Accords, signed in 1993 by the Government of Rwanda and the Rwandan Patriotic Front, were the result of a mediation process where significant international pressure was employed, and where internal divisions and opposition to the agreement were not sufficiently taken into account. This led to a situation where

14 Nathan L., "No Ownership, No Peace: the Darfur Peace Agreement", *Crisis States Working Papers Series* No. 2, 2006. *http://peacemediation.ch/wp-content/uploads/2012/11/Nathan_2006_No_Ownership.pdf*

an agreement was signed, but some of the key actors had no intention of implementing it. When the airplane of Juvenal Habyarimana and the Burundian President Cyprien Ntaryamira was shot down in 1994, it triggered the Rwandan genocide. There were many reasons for this genocide, but the heavy-handed approach to mediation also seemed to have been a contributing factor to the escalation.[15]

Key Lessons

Clarify what mediation is and what it is not: In cases where mediation is imposed by a global power, or under the influence of the UN Security Council and the Security Council does not give the Secretary General or the Special Envoys the space to mediate but dictates aspects of the outcome, it would help to avoid confusion if we were to talk about "high-powered diplomacy" rather than mediation. This is not to say that high-powered diplomacy is not needed in some cases, but it should not be confused with mediation. Confused terminology makes it harder for parties to provide informed consent to mediation.

Danger of using too much pressure: A minimal degree of consent is necessary for a mediation process to be called mediation. The greater the degree of consent, the more legitimate and sustainable the outcome will be. At the same time, parties will rarely come to the table without some form of pressure. It is essential that such pressure be balanced with trust built through dialogue. Too much pressure can derail a process and contribute to (re-)escalation of violence (e.g., Darfur and Rwanda). The principle of "do no harm" needs to be very carefully assessed, especially in cases where pressure is used. While NGOs may not be involved in such processes due to their lack of leverage, they may have a role to play in providing information about the dangers of excessive use of pressure.

3. Impartiality

Summary

The UN Guidance lists impartiality as one of the key fundamentals of mediation, defined as a balanced process wherein the mediator "treats all actors fairly". Without impartiality, it is very likely that the process will not be balanced, the mediator will not be accepted, and the process will fail. The UN Guidance advocates transparent, fair and balanced ways of dealing and communicating with the parties, and if this should prove impossible, the handing over of their role to other mediation actors.

Discussion

Political selection and mandate of mediators: The manner in which mediators are politically selected and mandated has a great impact on the extent to which they are perceived as impartial and able to treat the actors and the process in an impartial manner.

External pressure on the mediator: Even if the mediator is selected and mandated according to the principle of fairness, various regional or global actors may pressure the mediator and the process, thereby limiting his/her impartiality. The UN Guidance highlights that the mediator should "not accept conditions for support from external actors that would affect the impartiality of the process". Nevertheless, this is often challenging. Effective lead mediators have often been successful due to their ability to resist international pressures (e.g., General Sumbeiywo in the Sudan North-South Peace Process), while harnessing international leverage in support of the process.

Proscription practices, legal setting and state sovereignty: Other contextual factors can also hinder impartiality. For example, proscription of armed groups or indictments at the International Criminal Court (ICC) can hinder engagement with certain actors, reducing mediator impartiality. The UN Guidance allows for contacts with ICC indicted actors, as long as these are limited to contacts necessary for the mediation process. Some states may prevent third parties from approaching their internal opposition groups, preferring not to draw international attention to a conflict that they view as internal. However, without some third-party contacts before the negotiation phase, a process may never begin. Official and non-official mediation actors should strive to minimize the negative impacts of proscription policies and find pragmatic means of overcoming these obstacles in order to engage all actors relevant to a given process.

Asymmetric conflicts: The conflict actors' relative power and expectations pose another challenge to mediators with regard to impartiality. The conflict actors expect to be treated in an impartial, even-handed manner. This is particularly difficult in asymmetric conflict constellations in which one party – typically the state – enjoys international recognition, access to financial resources/aid and a quasi-monopoly on the legitimate use of force. Especially in asymmetric conflicts, it is important to build the negotiation capacities of *all* the conflict actors, so that they are sufficiently prepared to engage in meaningful negotiations.

Case Study: Sri Lanka

The last abortive Sri Lankan peace process of 2002–2006 illustrates the challenge of asymmetric conflicts, multiple roles, and the difficulty of engaging with proscribed actors. The Liberation Tigers of Tamil

15 Kuperman A. J., "The Other Lesson of Rwanda: Mediators Sometimes Do More Damage than Good", *SAIS Review* 16.1, 1996: 221–240. *http://muse.jhu.edu/journals/sais_review/v016/16.1kuperman.html*

Eelam (LTTE) made parity a precondition for meaningful negotiations. Although the Norwegians, due to their absence of a colonial legacy and lack of self-interest, were accepted by the Government of Sri Lanka and the LTTE under the term "facilitators" (not mediators) of the process, their efforts were embedded in and part of larger international efforts to bring peace to the country. These included crucial international actors (the EU, Japan, and the US) and used incentives and sanctions to further the peace process. Aid was conditioned on progress in the talks, but several donors still provided the Sri Lankan Government with ongoing support, using the argument that some programs had no connection to the peace process. While the Government of Sri Lanka felt the international community was meddling in its internal affairs, the LTTE perceived the international efforts as not even-handed: the LTTE-controlled northern and eastern parts of the country were unevenly affected by the aid conditionality tied to the peace process.

Moreover, the LTTE was proscribed in many countries, including the US. Their terrorist designation meant that the LTTE were unable to attend the first international pre-aid consultation in Washington. The Norwegians themselves also endangered their impartial status by both facilitating the peace process and heading the monitoring mission for the ceasefire agreement. The Norwegians were aware of the potential conflict in the two roles and tried to convince other international actors to take up the role of monitors, but this did not receive a positive response. The Norwegians also attempted to improve the effectiveness of the peace process by providing resources to the LTTE peace secretariat. This was criticized by several observers as biased engagement, although the Norwegians had also offered this support to the government's peace secretariat.[16]

The Sri Lankan parties' strategic calculation as to whether military options would serve their interests better than negotiations was the primary factor in the collapse of the peace process. The fact that the international community watched this passively instead of strengthening the Norwegian mediation role illustrates the decisive impact of the wider context on any given mediation.

Key Lessons

Share the tasks among different third parties: Giving too many roles to a single mediator increases the chances that she/he will lose impartiality, become overexposed, drawn into contradictory roles, or even be manipulated by the parties. On an operational level, the dilemma can be partly dealt with by having a balanced team. Different members of a mediation team can maintain different relationships, thus ensuring overall impartiality. On a broader level, drawing on and linking with other mediators, mediation support actors and non-mediation third parties (e.g. security experts working on monitoring ceasefires) can minimize loss of impartiality. The various phases, tracks (grass-root, mid-level, and high-level), and sectors (security, economy, etc.) of a peace process all constitute ways of mapping out needed tasks and assessing who can carry them out.

Empower and work with local mediators: In the West, it was long assumed that mediation needed an "outsider", an external party to the conflict. While the value of outsider mediators is still acknowledged, there is now greater recognition of the role of local mediators. Local mediators, who are embedded in the context and enjoy long-term relationships with the conflict parties, can open doors that external mediators cannot. They can also often provide a deeper understanding of the conflict, and thereby help to design and manage a mediation process that fits the specific case. Generally, some combination of external and local mediators can help maintain impartiality, as well as long-term commitment and legitimacy.

Change the contextual factors that hinder impartial mediation: Much can be done at the policy level to create more favorable conditions for impartial and successful mediation. This includes: professionalizing mediation, clearly distinguishing mediation from other third-party approaches (e.g., high-powered diplomacy or human rights advocacy approaches) and working towards a policy environment that does not criminalize mediators who seek to engage with proscribed and indicted actors.

4. Inclusivity

Summary

The UN Guidance for effective mediation gives considered attention to the value of inclusivity, as well as to how wider participation should be promoted and achieved. The Guidance also addresses some of the challenges mediators may face in designing an inclusive process, e.g., parties that are unwilling or unable to engage, as well as international legal regimes, such as the International Criminal Court.

Discussion

The MSN welcomes the emphasis on inclusivity, and supports the view that increased inclusivity, where a range of stakeholders are integrated, contributes to more durable, legitimate, and locally owned processes. The Guidance notes that a wide range of actors – including civil society and women – contribute to peacemaking. However, it is also important to remember that conflicts are inherently complex, and that ensuring inclusivity can be difficult in practice. Recognizing some of these challenges is one step towards dealing with them better.

16 See also: Goodhand J., B. Klem, G. Sørbø, *Pawns of Peace: Evaluations of Norwegian Peace Efforts in Sri Lanka, 1997–2009,* Norad Evaluation Department, Report 5, 2011. http://www.soas.ac.uk/development/news/file72788.pdf

Inclusivity hindered by the parties at the table: It is particularly difficult for mediators to ensure that inclusivity is meaningful and substantive when it is resisted by the parties.[17] By their very nature, peace negotiations that aim to bring about an end to violent conflict are not democratic processes. In many cases the conflict is a result of poor governance and a disconnect between the population and leadership. Therefore, mediation and negotiation processes often do not sufficiently reflect local capacities and opinions. At best, peace negotiations lead to mechanisms that over time generate more inclusive and democratic processes for dealing with differences in societies. Nevertheless, even if mediators have to deal with actors who lack democratic legitimacy, they should be careful not to simply engage with the most obvious and powerful stakeholders, but find meaningful ways of consulting and engaging with a broad set of actors, particularly those who may be less accessible and marginalized in decision-making processes.

Inclusivity hindered by choice or mandate of the mediator: Mediators should also be aware of their own limitations in promoting inclusivity – limitations that may result from their mandate or their approach to mediation (e.g. the desire to keep efforts contained and efficient; the constraints imposed by confidentiality, etc.). The challenge is to be inclusive enough to be legitimate, but not to insist on total inclusivity, as then the process will never start. This is a difficult judgment call for mediators to make. Mediators may also compete with each other, thereby minimizing the capacity to coordinate and reach out to different actors.

Inclusivity hindered by context factors: Mediators should also be aware of limitations to promoting inclusivity that result from various context factors. Proscription, for example, may have the unintended consequence of inhibiting engagement. The UN Security Council has started to acknowledge this – as evidenced, for example, by the recent splitting of the Taliban and al-Qaida lists in an attempt to create more space for dialogue in Afghanistan.[18] However, the situations in Somalia, the Middle East[19] and elsewhere illustrate the way in which formal and informal limitations can restrict the space for the UN and other actors to engage with proscribed groups. In these cases, meeting the challenges of participation and inclusiveness may require the mediator to rely on other intermediaries.

Case Study: Hamas-Fatah

An example of the challenges of inclusivity and the potential of role division in mediation can be seen in the efforts of MSN members to mediate the conflict between the two major Palestinian factions, Fatah and Hamas. President Carter and the Carter Center have a long history of engaging with governments and non-state armed groups that have been placed beyond the realm of traditional diplomacy. This experience demonstrates the importance of attempting to ensure that every significant conflict stakeholder has a voice in the process of mediation. Numerous states would like to see a resolution to the Fatah-Hamas conflict, and they recognize that this must include affording Hamas some role in Palestinian governance. However, other powerful states, particularly the US, have backed an exclusionary approach predicated on preconditions that have prevented Hamas from participating in Palestinian political life. While those states may pay lip service to the idea of reconciliation between Fatah and Hamas, in practice they support policies that make a resolution extremely difficult. The US in particular has intervened on multiple occasions, using its leverage with Egypt and with the West Bank Palestinian Authority to scuttle progress on reconciliation talks. In such a divisive political context, mediation actors with a genuine interest in resolving conflict will invariably end up out of step with states such as the US. This is a case of differing conflict analyses and political priorities making an inclusive and coherent approach to mediation impossible. Coordination, in turn, is also virtually impossible.

Case Study: Sudan North-South process

In the Sudan-North South process between 2002 and 2005, the parties (SPLM/A and Government of Sudan) resisted greater inclusion of marginalized regions (e.g., Darfur and Beja) as well as certain actors (women, opposition parties, elders, etc.). The mediator's approach was to convince the parties that some topics, like social issues and compensation for victims, could not be adequately addressed without the inclusion of the affected actors. As a result, some women and marginalized groups were eventually included in some phases of the negotiations. However, the parties prohibited the perspectives and experiences of many other marginalized actors from being fully recognized or utilized, denying them a substantive voice at the table.

Case Study: Liberia

Liberia experienced 14 years of conflict, which left approximately 200,000 people dead. As the conflict between President Charles Taylor and the rebels (the Movement for Democracy in Liberia (MODEL) and Liberians United for Reconciliation and Democracy (LURD)) escalated, civilians were significantly affected. Women began to mobilize in a campaign for peace. Examples of organizations that played a pivotal role in mobilizing

17 Moore C. W., *The Mediation Process – Practical Strategies for Resolving Conflict*, San Francisco: Jossey-Bass, 2003:147.

18 Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities, *http://www.un.org/sc/committees/1267/information.shtml*

19 De Soto A., End of Mission Report, May 2007. *http://image.guardian.co.uk/sys-files/Guardian/documents/2007/06/12/DeSotoReport.pdf*

women include the Women in Peacebuilding Network (WIPNET) and the Mano River Peace Network (MARWOPNET). These women's organizations mobilized women across ethnic, religious, and political divides in an anti-war campaign. Liberian women at the peace talks convened what is now known as the Golden Tulip Consultative and Strategic Planning Meeting, where they issued a declaration calling for greater participation in the peace process. Ultimately, Liberian women were allowed to send their representatives to the political and security committee at the negotiation table.

Finally in 2003, the Liberian government signed the Accra Peace Accord with MODEL and LURD, resulting in the cessation of hostilities and the establishment of a transitional government with elections in 2005. Ellen Johnson Sirleaf was elected president, following a massive support campaign by women from WIPNET and other organizations. As a result of civil society's efforts, the Accra Comprehensive Accord reflected a power-sharing arrangement that divided Liberia's government departments, publicly-owned corporations, autonomous government agencies and commissions between Charles Taylor's government, former armed factions, and civil society. Significantly, MARWOPNET was also a signatory to the peace agreement. As the rebuilding of post-conflict Liberia continues, civil society in Liberia, especially the women's movement, continues to participate in peacebuilding and post-conflict reconstruction initiatives, including Demobilization, Disarmament and Reintegration (DDR) and Security Sector Reform (SSR) processes.

The Liberian peace process exemplifies how inclusive peace processes that provide space for civil society can contribute significantly towards quality agreements, as well as sustainable peacemaking, peacebuilding and post-conflict reconstruction. Additionally, the Liberian case demonstrates that when different stakeholders are involved in peace processes, there is room for a diversity of ideas that will inform the agreement and be used during the implementation phase of the agreement. The participation of civil society in Liberia ensured more democratic and participatory decision-making processes that recognised the needs of Liberian society and provided an opportunity for the stakeholders to accept the agreement.[20]

Key Lessons

Analysis and capacity building: Ensuring that inclusivity is meaningful calls for in-depth knowledge of a case and engagement with local actors over a long period of time. This can contribute to mediation's capacity to extend beyond the obvious stakeholders. Analysis and brainstorming can stimulate innovation and creative thinking about process design options that can promote inclusivity. More inclusive processes may also need some prior investment in the capabilities of civil society and marginalized groups to help them engage and give voice to their views.

Time and a plurality of approaches: Meaningful inclusion may require a diversity of approaches, and also slower and more considered ones. Quick-fix solutions imposed from the outside are likely to miss the root causes of conflict, and may even worsen the situation. The negotiating table is not the only place where peace is determined and shaped. It is important to listen and respond to the demands of those actors the mediator wants to include, yet while some actors want a place at the table, others will not, preferring to exert influence behind the scenes. There should thus be multilayered approaches to engagement. Diverse dialogue forums at the local and national level can provide important ways of promoting broad participation in peace processes and move discussion of substantive issues beyond the negotiating table. Even if some parties choose not to be at the table, mediators can keep in contact with them in order to inform them about the process and prevent them from spoiling it because they feel excluded.

Coordination of multiple third parties: A commitment to inclusivity may also involve more innovative forms of formal and informal negotiation and the coordination of the diverse cluster of third parties that may be involved in a given mediation. The case of the International Contact Group in the Philippines provides an innovative example of international NGOs sharing the negotiating table with state actors (see case study in the section on coordination).

Work with civil society: A track 1 mediation process is much more likely to be effective if local civil society is not polarized, even if this is rarely the case. Nevertheless, track 1 processes often are a result of an acute emergency, and cannot wait for civil society dialogue platforms to be set up. It would therefore be beneficial to build up dialogue platforms and infrastructures for peace independently of any imminent crisis.[21] This is especially the case because it takes years, if not decades, to develop such infrastructures for peace. Once an acute crisis calling for a track 1 process is imminent, efforts are needed to assess the contribution of local mediators, and engage with track 2 and 3 actors both when setting up the formal process, during the ongoing process, and then in the hand-over phase. One of the key challenges of externally-supported mediation efforts is to support local efforts at peacebuilding and mediation, without imposing external agendas and undermining local efforts.

20 For more on this case, see Ackerman R., "Rebuilding Liberia: One Brick at a Time", *World Policy Journal,* 26 (2), 2009:83–92; African Women and Peace Support Group, *Liberian Women Peacemakers: Fighting for the Right to be Seen, Heard and Counted,* Trenton, Africa World Press, 2004; Dabo A., *In the Presence of Absence: Truth Telling and Displacement in Liberia. Cases on Transitional Justice and Displacement,* Washington, D.C.: International Center for Transitional Justice, Brookings, 2012; Fuest V., "This is the Time to Get in Front: Changing Roles and Opportunities for Women in Liberia", *African Affairs,* 107 (427), 2008:201–224.

21 Kumar C., "Building National "Infrastructures for Peace": UN Assistance for Internally Negotiated Solutions to Violent Conflict", In: Global Governance 18, UNDP, 2011:13–20. *http://www.undp.org/content/dam/undp/library/crisis%20prevention/UNDP_BCPR_Chetan%20Kumar_Infrastructures%20for%20Peace.pdf*

5. National Ownership

Summary

National ownership over a mediation process, its impact, and outcomes, implies widespread commitment by the conflict parties, affected communities, and society as a whole to the effort towards peace. National ownership depends on the extent to which the actual process is inclusive (discussed in the section on inclusivity), but includes also the support of people and constituencies not linked to the negotiation table. While the peace process must belong to national stakeholders, mediators play a role in harnessing and generating their ideas to reach a sustainable settlement of the conflict.

Discussion

Evidence from many attempts at mediating peace strongly supports the need to encourage broad national ownership of peace processes. Nevertheless, while there is consensus that national ownership is useful to increase the legitimacy and sustainability of peace agreements, there is still a lack of clarity about how it is defined[22] and achieved.

Link to inclusivity: An inclusive process is a necessary but insufficient factor for national ownership. As the pursuit of a diplomatic solution in Syria has shown, the choice of representative stakeholders is deeply political and fraught with difficulties, especially as long as there is no regional or global consensus on how to get a peace process started. In fragmented Syria, backing certain groups can mean alienating others, and can result in third parties losing their impartiality. Similar challenges have also arisen in various other peace processes, for example in Burundi (where some parties split during the process, while others opted out of it) and Darfur (where international pressure, lack of internal coherence among the Darfur movements, and the strategy adopted by the Government of Sudan increasingly led to fractionalization). The "deadline diplomacy" practiced during the 2005/6 Darfur peace talks offered important lessons on the perils of producing accords for which neither the parties nor their constituencies are ready, and to which they are not committed.[23]

Content of agreement: A second key challenge to national ownership relates to the content of a peace agreement. Mediators may, for example, usefully bring in experiences and experts from other conflicts on a wide range of topics (e.g., security, justice, economics, power-sharing), but should be very careful to avoid "cut and paste solutions" that do not fit local realities and which undermine national ownership. In the field of justice, mediators also need to identify a middle ground between international standards and local norms. Mediators can face the difficult situation of debating whether "internationally-accepted" values can be relinquished – and if so, which ones and to what extent – in the name of national ownership (see section on international legal frameworks and norms).

Balancing local and international approaches: Mediators and other third parties face a delicate balancing act in choosing those tools that promote internationally acceptable problem-solving while enabling local solutions to emerge and be taken up. In addition to the leveraging of local and indigenous mechanisms for conflict resolution, other societal actors can be engaged in ways that make them genuine stakeholders and guarantors of the agreement. The business community can, for instance, be involved in the economic reintegration of combatants, while local monitors can help to safeguard returning refugees. The mediator could enable the above by encouraging the main stakeholders at the negotiating table to think creatively about the local capacities that could contribute to the implementation effort. It may also be possible for some of the above groups and mechanisms to be mentioned in the text of the agreement. Finally, sustained engagement by international actors – including, but not limited to, the mediator – with independent strands of society (youth, women's groups, etc.) is another way to strengthen national ownership beyond the inclusion of all groups at the negotiating table.

Case Study: Somalia

Somalia, having experienced many internationally sponsored peace processes,[24] is a case in point. International peace processes have largely failed to date. External third parties have been criticized for equating state-centric approaches with successful reconciliation, engaging disproportionately with unrepresentative elites at the expense of other relevant interlocutors, including civic leaders, and determining agendas, timetables, and procedures on behalf of the Somalis. Yet state-building does not always lead to peace-building, and in Somalia the international focus on building the central state has at times led to an escalation of the conflict. Third parties also have had difficulty in engaging with certain actors as a result of counter-terrorism policies and prac-

22 In some contexts, "nations" can refer to ethnic groups; thus, there may be hundreds of nationalities in one country, which renders the concept of "national ownership" useless. In the UN Guidance, a different meaning is used, referring basically to local ownership by all actors in the area who are affected by the conflict.

23 Nathan L., "No Ownership, No Peace: the Darfur Peace Agreement", *Crisis States Working Papers Series* No. 2, 2006. http://peacemediation.ch/wp-content/uploads/2012/11/Nathan_2006_No_Ownership.pdf

24 Djibouti Talks, June–July 1991; Addis Ababa National Reconciliation Talks, January-March 1993; Sodere Conference, Ethiopia, 1996–97; Cairo Conference, Egypt, 1997; Arta Peace Conference, Djibouti, 2000; Mbagathi Conference, Kenya, 2002–2004 etc. For a more detailed overview of the various peace conferences and deals aimed at bringing the Somali crisis to a close, see Bradbury M., S. Healy, *Whose Peace is it Anyway? Connecting Somali and International Peacemaking*, Accord, 2010.

tices, and the dominant international discourse that a military solution is viable.[25]

In a different context and with a different history, locally-managed processes in Somaliland and Puntland have been successful in improving social relations and creating administrations capable of upholding them. While Somaliland and Puntland cannot be directly compared to South-Central Somalia due to the different context and history, these cases do provide ideas and lessons regarding effective locally-led peace-building and mediation initiatives.[26]

Key Lessons

Link track 1 efforts to community-based approaches: Where outsiders are involved in mediation, they should seek to convince as broad and representative a cross-section of the local population as possible to buy into the process. Strong grassroots structures offer an effective vehicle for broadening national participation, and therefore ownership, of a peace process. Such "infrastructures for peace" (e.g. peace committees in Kenya or Ghana) that exist before, during, and after track 1 peace agreements need to be linked with track 1 efforts. Greater awareness of these multi-track peace efforts, and greater linkages with them, seems to be beneficial as regards the sustainability of peace.

Support local capacities for peace: The capacity of local actors to influence or drive a peace process is key to the sustainability of peace. Efforts are therefore needed, long before and after the immediate crisis, to support peace-building efforts and processes that deal with polarization within civil society. Examples include mechanisms to support the diffusion of messages of peace at the local level (e.g., theaters, music, movies, etc.). A failure to engage at all levels can lead to a lack of awareness or only partial acceptance of a final agreement, which in turn can be rendered redundant. At the same time, an over-dependence on external assistance risks undermining national ownership.

6. International Law and Normative Frameworks

Summary

This section of the UN Guidance outlines relevant aspects of international law and other normative frameworks in which mediation takes place. It underlines that mediators need to be familiar with the applicable rules and relevant normative expectations of conflict actors. It also points to the difficulties and dilemmas mediators face in this regard, such as balancing the immediate humanitarian imperative of stopping violence with demands that human rights violations and other serious crimes be addressed. The UN Guidance's broad view on normative frameworks embraces the plurality of formal and informal, local and international norms, and the sometimes highly divergent understandings of justice, truth, and reconciliation of the various actors involved in peace processes.

Discussion

It would be beyond the scope of any general, short guidance on mediation to outline all the dilemmas related to this topic, as well as to provide specific ways of dealing with these dilemmas. The UN Guidance says that mediators – for the sake of role clarity – cannot become advocates for international laws and norms, but that they have to take into account normative standards when designing a process: they need to know the legal frameworks (e.g. that they cannot endorse peace agreements that provide amnesties for genocide, crimes against humanity, war crimes or gross violations of human rights, including sexual and gender-based violence), and know when they need to seek legal advice to further clarify these parameters for the parties. Other experts can contribute with insights from other cases that illustrate various transitional justice mechanisms and models regarding sequencing of peace and justice arrangements and combined measures for the purposes of truth, reconciliation, and accountability.[27]

The evolving legal context also poses some advantages for the mediation process. For example, rather than becoming advocates for international law, mediators can point out that peace agreements that do not satisfy minimal international legal standards will not be supported by the international community: if parties want international support for implementation, they will need to meet certain standards. The development of the ICC also has clarified the amnesty question, with the formal prohibition of negotiating blanket amnesties. This has, in some ways, made the mediators' task clearer, as it strictly limits their flexibility on this challenging subject.

25 Improving International Support to Peace Processes, Case Study Somalia, OECD DAC and Swiss FDFA, September 19–20, 2011: *http://www.oecd.org/development/conflictandfragility/49071359.pdf*. More recently, see: Frazer O.,"Somalia: Little Hope for Peace", *CSS Analysis* No. 119, Zurich: Center for Security Studies, ETH Zurich, 2012.

26 Bradbury M., "Becoming Somaliland: Understanding Somalia and Somaliland", *African Issues,* Indiana University Press, 2008.

27 See, e.g., Bloomfield D., T. Barnes, L. Huyse, *Reconciliation after Violent Conflict. A Handbook,* Stockholm: International Institute for Democracy and Electoral Assistance, 2003. Johnson P., *Making the Difference? What Works in Response to Crises and Security Threats – The Debate Continues.* European Commission, External Relations, 2009. *http://www.interpeace.org/publications/cat_view/8-publications/12-somali-region*
Kirchhoff, Lars (2009): Linking Mediation and Transitional Justice. The Use of Interest-Based Mediation in Processes of Transition, in: Ambos, Kai; Large, Judith; Wierda, Marieke (eds.): Building a Future on Peace and Justice, Studies on Transitional Justice, Conflict Resolution and Development The Nuremberg Declaration on Peace and Justice. Springer, pp. 237–260.
Kraus, Anne Isabel (2011): Culture-sensitive process design: Overcoming Ethical and Methodological Dilemmas, in: Simon Mason, Damiano Sguaitamatti (eds.), "Religion in Conflict Transformation," Politorbis Nr 52, 2/2011.

Case Study: Uganda-LRA

The Juba talks[28] between the government of Uganda and the Lord's Resistance Army (LRA) in 2006 constituted one of the first processes to be impacted by a new framework set by the ICC. President Museveni had referred the LRA case to the ICC prosecutor in 2003, at a time when he was setting up a military campaign. There are indications that later on he regretted this move, since it minimized the political options for dealing with the situation.[29] Increased pressure after the indictments helped to bring the LRA to the negotiating table and made issues of reconciliation and accountability the central focus of negotiations. However, this case also demonstrates that the ICC indictments cannot easily be used as political pressure, since they cannot then be retracted to encourage cooperative behavior (and the ICC was also not designed with this purpose in mind).

Peace talks did not take place with the indicted leadership of the LRA, but with non-indicted members of the LRA in Juba, although the indicted leadership was kept involved in the process as much as possible. As these contacts took place in the bush, the lead mediator could not have enforced the arrest of the LRA leadership even if he had wanted to. Some trust was built, but not enough to reach a final agreement. In the end, the draft for the final agreement included a comprehensive and sophisticated transitional justice framework that sought to satisfy victims and lay the basis for post-conflict reconciliation, while at the same time trying to deactivate the ICC's jurisdiction via the principle of complementarity (prosecution of the most serious crimes by the High Court of Uganda to achieve formal legal accountability). However, given that the ICC arrest warrants would likely persist even after the signing of peace agreements, and that trust was very low, no final peace agreement was signed. While the talks helped to pacify the situation in North Uganda, the problem shifted to neighboring states, and remnants of the LRA have continued to commit human rights atrocities in Chad, the Democratic Republic of Congo, the Central African Republic, and South Sudan.

The ICC influenced the process design, and the process outcome. Nevertheless, it is difficult to say whether the process would have been more successful without the ICC indictments, given the actors and issues at stake. This case does call into question the extent to which military and legal pressure can be combined with dialogue and mediation, and may indicate the limits of mediation in such cases.

28 See also Lanz D., "Northern Uganda, Juba Negotiations", In: *Unpacking the Mystery of Mediation in African Peace Processes,* Mediation Support Project, Center for Security Studies and swisspeace, 2008.

29 Uganda: Comments by Museveni and Rugunda on ICC Warrants; Remarks by European Union and Member States, Sept 5, 2006. *http://www.iccnow.org/?mod=newsdetail&news=1914*

Case Study: Sudan

President Carter and The Carter Center's recent engagement in Sudan illustrates ways in which non-state actors can work with those who have been indicted by the ICC for the purpose of enhancing peace. Currently, the international community's engagement with Khartoum and more specifically with regard to direct talks with President Omar al-Bashir is limited, particularly by Western capitals. In this context, President Carter continues to communicate directly with President Bashir and other key stakeholders in the region. This engagement fills gaps in a flexible manner, and supports formal international peace processes, especially those by the African Union High-Level Panel (AUHLP), the focal point for international mediation between the Sudans and the wider diplomatic community. In May 2012, President Carter met President Bashir in Khartoum. In the subsequent press conference, President Carter announced that President Bashir had repeated a pledge that the Sudanese Armed Forces (SAF) would withdraw from Abyei. In a subsequent phone call between President Carter and President Salva Kiir, President Kiir acknowledged that the SAF were withdrawing from Abyei, a development later confirmed in a UN Security Council Statement. This is an example of the type of constructive engagement which NGOs are often in a position to undertake, even with actors who have moved beyond the pale of Western diplomacy.

Key Lessons

Need for case-specific mapping of legal situation: Generic guidance can provide broad orientation, but can never replace case-specific conflict analysis that should contain precise descriptions of the relevant international standards and laws, rules, and normative expectations of the actors involved, as well as possible contradictions between these normative frameworks. This does not necessarily need to be undertaken by the mediators, but they need to know enough to communicate with legal experts who can help them on this topic. Clarity with regard to legal status, as well as the understanding and prioritization of norms and expectations in a given case, is vital for clarifying what is acceptable and legitimate in the respective setting, in order to attain national ownership and international support.

Use the advantages of the legal framework: Mediators should also focus on the advantages of a given legal and normative framework and how to best use them for the peace process. The ICC, for example, has clarified issues related to acceptable and unacceptable amnesties, thus reducing ambiguity for mediators and facilitating a clearer division of labor between mediators (who design the process and work with the parties on crafting agreements) and legal experts (who come in to advise mediators and conflict parties on what aspects of international law are relevant, and what type of agreements respect this framework).

Legal measures are not retractable forms of pressure: While it is clear that various forms of pressure might be needed alongside dialogue and mediation in order to move parties forward, legal frameworks are not useful as retractable sources of pressure to induce cooperation.

Respond to local and international legal and normative frameworks: A key challenge for mediation teams is to design processes and agreements that respect both the normative frameworks of conflict parties and affected societies, as well as the applicable international legal standards, in particular but not limited to human rights. To ensure acceptability and ownership as well as international support, processes and agreements should be co-designed with experts on local and international normative frameworks. In most cases, some combination of perspectives will be needed to define the proper role of normative standards.

7. Coherence, Coordination, and Complementarity of the Mediation Effort

Summary

This section of the UN Guidance addresses the proliferation of governmental, multilateral, and non-governmental bodies increasingly involved in mediation processes. The Guidance recommends that mediation processes be run by a lead mediator, with other mediation actors working in coordination with, and under the mantle of, the lead. It also notes that the decision of who should lead a mediation process should be based on an analysis of which mediator is most likely to be successful, is accepted by the parties, and has the necessary resources and capacity. Finally, the Guidance suggests that mediation actors should cooperate based on a common mediation strategy, including agreeing on systems for information-sharing and degrees of transparency.

Discussion

MSN members are particularly sensitive to the dynamics of cooperation, and at times competition, in mediation processes. Viewed from this perspective, the MSN recognizes the potential utility of a group of mediating organizations working in concert, ideally behind a lead mediator, as well as the possible pitfalls of overlapping mandates, competition between mediators, and forum shopping.

At their best, collaborative and diverse mediation efforts include NGOs, governments, and multilateral organizations working together based on a rational division of labor. For example, NGOs are well-placed to provide mediation expertise and process support while ensuring that local civil society stakeholders can contribute meaningfully to the process, bringing in a grassroots perspective, especially from traditionally disempowered constituencies. At the same time, a strong lead mediator, possibly an empowered UN envoy or a government, can attempt to maintain a unitary effort, while lining up international support for the mediation process. States traditionally have a wider range of levers to push parties to a solution, which NGOs alone typically do not possess. In some situations, interested states may prefer non-governmental actors to lead a process which they can support indirectly, allowing for a degree of distance and deniability on the part of the states.

Third-party coordination is notoriously difficult to achieve. Difficulties with coherence and complementarity often go beyond a lack of trained, professional mediators, or overlapping mandates. Without the coherence of "agreed and/or coordinated approaches", complementarity of the mediation effort and a "clear division of labor" become almost impossible. To put it another way, if major stakeholders in the conflict, particularly states, are backing opposing sides in the conflict, or if they simply have widely diverging views on the nature of the conflict and potential solutions, a coordinated approach to the mediation is likely to prove elusive.

Case Study: The International Contact Group in the Philippines

The Government of the Philippines and the Moro Islamic Liberation Front (MILF) have conducted on-off peace negotiations since 1997. Since 2001, a peace support architecture has developed, with three core pillars: 1) the facilitator, Malaysia, since 2001; 2) the International Monitoring Team (IMT), deployed since 2004, with the participation of Malaysia, Libya, Brunei, Japan (2007), Norway and the EU (2010); and 3) the International Contact Group (ICG), established in December 2009. The ICG is an innovative, independent, hybrid mechanism comprised of four countries: Japan, the UK, Turkey, and Saudi Arabia, and four international NGOs: Muhammadiyah, the Asia Foundation, the Centre for Humanitarian Dialogue, and Conciliation Resources. It is the first mechanism of its kind in which international NGOs (INGOs) and diplomats are working together in a formal and permanent setting. The ICG was created mainly because the negotiating parties sought outside guarantors (the MILF more so than the Philippines government) given the collapse of the process in 2008, as well as the low levels of trust between them. The INGOs are tasked with acting as a bridge between the parties, the facilitator, local partners, business and others, and providing technical assistance to the parties. A core challenge has been to commit to confidentiality while advocating, to the extent possible, for inclusion and transparency. International NGOs have technical expertise and the flexibility to engage with a wide range of actors and explore new ideas; at the same time, diplomats provide essential leverage and political and economic support for the peace process.

On October 15, 2012, the Government of Philippines and the MILF signed a Framework Agreement that serves as a road map for political and structural reforms in Mindanao, including the creation of an autonomous political entity, to be named "Bangsamoro". The agreement also contains provisions for the governance of resources and territory, and the drafting of a basic law by the Bangsamoro people.

Whilst the inclusion of INGOs is a boost for inclusive and innovative approaches to peacemaking, this does not guarantee that voices of conflict-affected communities will be heard at the negotiating table. INGOs can become an additional channel for indirect public participation, but in this instance they have had to balance their role of assistance and support as requested by the parties and the Malaysian facilitator. An important lesson is to be careful about crowding out local NGOs and voices. INGOs can help empower them to some degree at the table, but cannot replace them. Furthermore, while this initiative has succeeded in the Philippines and should be emulated where possible, it may not always be directly transferable to every context – the success of such a model depends on strong political will, good faith between the parties, and the selection of suitable honest brokers as participants.

Case Study: Sudan-Uganda

Another example of an effectively coordinated process was the Carter Center and President Carter's mediation between Sudan and Uganda from 1995–2003, leading to the restoration of diplomatic relations between the two countries and a platform for closer engagement as part of the Navasha Process on Sudan. At the center of this process was an explicit invitation from the governments of Sudan and Uganda for President Carter to assist them in resolving their differences, including helping them to address the problem of the Lord's Resistance Army (LRA). The voluntary invitation provided explicit authority to the mediator as well as the latitude to design a process that would address the multiple dimensions of the problem. The process began with confidential consultations with the parties and, as it continued, expanded to include representatives of other affected and interested parties, as the process moved to a prolonged implementation phase. This involved UN agencies, international and local NGOs, and a number of interested countries. These included both Egypt and Libya, who agreed to participate in meetings chaired by the Carter Center on an exceptional basis, despite the Center having no diplomatic status. Coordination was maximized by direct and transparent communication with the parties involved to the greatest degree possible, in order to maximize the possibility of all parties working toward an agreed and common goal.

While third-party coordination was good, one of the key actors, the Lord's Resistance Army (LRA) was not able to participate directly in the first planned summit meeting, as originally intended, due to communication difficulties. A decision had to be made whether to move ahead with the planned summit meeting or not, and the parties decided that they wished to do so. The process consequently focused more on the governments of Sudan and Uganda containing some aspects of the conflict and each agreeing to stop supporting opposition groups based in the other country, rather than providing a platform for direct negotiation with the LRA about the root causes of the conflict. The case illustrates how the parties themselves – as opposed to the mediator – often limit inclusivity and therefore also the potential impact of a mediation process.

Key Lessons

Use contact groups: Using international contact groups has its pros and cons.[30] On one hand, they can be an additional forum for conflict dynamics to play out. On the other hand, however, such groups have a key role to play in attempting to hammer out a common understanding of the nature of the conflict in question, as well as possible solutions, especially between governments. This, in turn, can have an enormous impact on the potential for coherence and complementarity of mediation efforts.

Information-sharing as a minimal step: While complementarity and coherence are goals to strive towards, information-sharing is often an easier step to start with. In cases where a lack of a coherent approach precludes a full partnership between mediation actors, it is possible for varying degrees of information sharing, and even advocacy efforts for more coordination, to at least reduce the impacts of a lack of coherence. This advocacy and analysis role is one to which NGOs are particularly well-suited. The shared experience of working together over time can help various mediation actors build trust and coordinate between one another more effectively.

8. Quality Peace Agreements

Summary

The section of the UN Guidance on quality peace agreements underscores that peace agreements should seek to address the root causes of the conflict as well as to create an appropriate framework for a unified vision after having taken into consideration as many opinions as possible. Peace agreements need to have clear modalities for implementation, monitoring and dispute resolution. Another feature of a quality peace agreement is seen in the level of commitment from conflict parties. Strong commitment from political leaders and the populations involved is needed to reach a quality

30 See for example: Whitfield T., *Friends. Indeed? The United Nations, Groups of Friends, and the Resolution of Conflict,* USIP, 2007.

peace agreement. External support is also critical. It may come in the form of international support or external funders, who may facilitate or enforce commitment to the agreement by conflicting parties.

Discussion

Peace agreements are political agreements negotiated by parties that are often only partially democratically legitimized, or who may be democratically legitimized but not acting fully according to democratic principles. They therefore have a limited legally binding mandate that is often time-bound. Peace agreements should be seen as paths to peace, rather than as end goals. Vagueness about the relationship between peace agreements and the constitution must be avoided, as constitutions should in the long-term supersede all other documents in a country.[31] Legal disputes regarding peace agreements and constitutions also have been cited as obstacles to the credible implementation of peace agreements, for example in the case of Zimbabwe. Quality peace agreements should kick-start democratic processes and should be supported by constitutional review or amendment processes to ensure that the agreements are supported by longer-term institutional, legal, and policy processes.

An assessment of the "quality" of a peace agreement cannot be made merely by looking at what is written on paper. It must be viewed in relation to the conflict it seeks to address, the process that was used to create it, and the type of peace it achieves. Some peace agreements that were of poor quality (on paper) have led to peace, while some "perfect" peace agreements (on paper) have failed. Nevertheless, the technical aspects of a peace agreement contribute to the quality of an agreement, e.g., that there are no internal contradictions, no major gaps (e.g. with regard to gender), no creative ambiguity (unclear, vague language), and that there is clarity of implementation modalities. One simple way of initially assessing the quality of a peace agreement is to ask the parties to which extent they see it as being "fair", "wise", "efficient", and "durable".[32]

Case Study: Sudan Comprehensive Peace Agreement

The Sudan North-South peace process led to the Comprehensive Peace Agreement (CPA) of 2005. It was not comprehensive as the negotiating parties did not want to address all conflicts in Sudan; and it also left some of the hardest decisions to be resolved in the future. Nevertheless, it ended one of the longest wars in Africa and is often taken as an example of a quality peace agreement, despite the challenges of implementation that it faced during the transition period, as well as the difficulties the two Sudans still have today after the independence of South Sudan. One of its key qualities was a clear implementation matrix, which was negotiated before the total agreement was signed. Previous peace agreements focusing on the Sudan North-South conflict had often failed due to their lack of clarity on implementation modalities. There were also many innovative approaches in the agreement, which have since become sources of inspiration for other peace agreements, e.g., the separation of the management of natural resources from the more contentious issue of ownership[33], or the ideas regarding how to respect the Islamic and Western banking systems. The risk of a technically good peace agreement, however, is that the parties may insist excessively on the letter of the agreement being followed, rather than building sufficient relations and trust to move forward. This was partly the case in Sudan, not least due to the death of one of the main negotiators, John Garang, only a few months after he had signed the agreement.

Key lessons

Inclusion of the voices of youth and other marginalized groups in the peace agreement: The quality of a peace agreement is generally improved by the degree to which it is based on the interests, needs, and views of all key stakeholders in a dispute or conflict. Apart from gender being an important factor in the development and subsequent implementation of peace agreements, there is also a need to incorporate the views and needs of other marginalized actors, such as young people, traditional leaders, religious leaders, or the diaspora. Very often, for example, youths are actors in conflict and potential spoilers of a peace process. Young people are often cheap targets for recruitment by warlords, voluntarily and involuntarily. Nonetheless, the same youths can also be vehicles for sustainable peace processes, and their perspectives and contributions towards peace agreements are important. This requires the inclusion of youth perspectives, institutions, organizations, and leaders in policy drafting, decision-making, negotiations, and mediation. While these marginalized groups need not all necessarily sit at the negotiation table, various formats and processes can be established to ensure their views and needs are heard and fed into the peace agreement.

Communication of peace agreement: The peace agreement process should mainstream the means of educating the public and raising awareness of the content of the agreements and the modalities for ensuring that

31 After the Kenyan National Dialogue between the Orange Democratic Movement (ODM) led by Raila Odinga and the Party of National Unity (PNU) led by Mwai Kibaki, there was a constitutional review process which led to the adoption of a new constitution in 2010. This constitution paved the way for democratic elections, scheduled for 2013. For more on this case, see Maingi G., "The Kenyan Constitutional Reform Process: A Case Study on the Work of FIDA Kenya in Securing Women's Rights", *Feminist Africa,* 2010.

32 Susskind L., J. Cruickshank, *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes,* New York: Basic Books, 1987.

33 Haysom N., S. Kane, *Negotiating Natural Resources for Peace, Ownership, Control and Wealth-Sharing,* Center for Humanitarian Dialog, 2009. *http://fr.hdcentre.org/files/Natural%20resources%20crc%20final.pdf*

conflict parties are accountable to the agreement. There should be plans for information and education campaigns on the content, implications, and expectations of the agreement.[34] One reason why the Annan Cyprus plan was rejected in a public referendum in 2004 was due to a lack of communication regarding its content and a lack of understanding and preparation among the wider public.[35]

Implementation: A peace agreement is only as good as its implementation, and this is where many fall short. Agreements should have an implementation plan and mechanisms for evaluation and monitoring the implementation, which should be clarified before signing. Furthermore, agreements should uphold human rights and the rule of law, and in cases where violations have been committed, there should be scope for mechanisms of transitional justice. Respect for basic international norms and legal parameters are essential if parties want their peace agreement to be accepted and supported by the international community. At the same time, donors and the international community sometimes put counter-productive pressure on the mediators and parties to sign an agreement quickly, thereby jeopardizing the timeline for negotiating the implementation modalities.

Conclusions

Putting the UN Guidance into practice is challenging because the dilemmas generally only become manifest when confronted with concrete cases. Mediators and policy-makers need to become more aware of the potential challenges and dilemmas they may face in order to address them adequately. Based on the UN Guidance and having examined some of the challenges of putting it into practice in a number of cases, the following final points stand out:

Mediation needs to be professionalized: Peace mediation needs professionalization, through more in-depth training, research and better networking. Mediation is an art, and personality is vital, but it is also a technique that can be learned, taught, and still further developed through research. There is a need to have capacities to respond rapidly and to sustain support.

Analysis before action: Mediation efforts should be the result of careful case analysis, rather than prescriptive, standardized recommendations. That said, an awareness of the challenges that have arisen in past mediation processes can inform where difficulties may arise.

Convince parties to embrace greater inclusivity, rather than pressuring them: NGO actors, including members of the MSN, routinely call for greater inclusivity in peace processes, as it increases their legitimacy and sustainability. There are more and more good examples of how this can be achieved, for example through approaches at the negotiation table, through parallel consultation processes, or through outreach mechanisms. Generally, it is better to convince armed groups of the need for greater inclusivity than to use pressure.

Engage civil society in the long-term: More work is needed in cases where civil society is polarized. Peace committees, infrastructures for peace, etc. are useful instruments for doing this, but must be carefully tailored to the nature of the state and civil society in which they are developed. It also takes a period of time – years to decades, maybe – for strong locally rooted peace committees to develop, and this may be incompatible with the urgency of addressing the conflict through a mediation process.

The implementation phase needs sustained support: Many peace agreements fail during the implementation phase. Sustained international support is needed long after the agreement has been signed.

Share information and include civil society representatives in contact groups: Coordination of third party mediators is challenging. Often, one of the first steps is to develop processes for sharing information. It is too early to cite the example of the International Contact Group in the Philippines peace process as "best practice" for all cases, but the example does indicate the benefits of giving greater space and voice to civil society actors, for example represented by both local and international NGOs.

The MSN members warmly welcome the UN Guidance for Effective Mediation as one step towards professionalizing the field. MSN members see it as an international call for improved use of the "mediation" tool and for the promotion of greater patience and perseverance in dealing with conflicts, as opposed to the imposition of quick-fix solutions or the use of military means.

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34 See, for example, the Nuba Mountains Ceasefire Agreement 2002, Art III.9, "The Parties shall undertake to provide accurate information concerning the cease-fire through the press and the media on a regular basis and shall not interfere with the dissemination of each other's information."

35 Martin H., *Kings of Peace Pawns of War: the Untold Story of Peacemaking,* Continuum International Publishing Group, 2006.

Mediation Support Network

Profile

The Mediation Support Network (MSN) is a small, global network of primarily non-governmental organizations that support mediation in peace negotiations.

Mission

The mission of the MSN is to promote and improve mediation practice, processes, and standards to address political tensions and armed conflict.

Furthermore, the MSN connects different mediation support units and organizations with the intention of

- promoting exchange about planned and ongoing activities to enable synergies and cumulative impact;
- providing opportunities for collaboration, initiating, and encouraging joint activities;
- sharing analysis of trends and ways to address emerging challenges in the field of peace mediation.

Activities

The MSN meets once or twice a year in different places. The organization of the meetings rotates, and each meeting is hosted by a networking partner. Each meeting has a primary topical focus that is jointly decided by all network members.

MSN Members in 2013

- African Centre for the Constructive Resolution of Disputes (ACCORD) *www.accord.org.za*
- Berghof Foundation *www.berghof-foundation.org*
- Carter Center *www.cartercenter.org*
- Center for Peace Mediation (CPM) *www.peacemediation.de*
- Centre for Mediation in Africa, University of Pretoria (CMA) *www.centreformediation.up.ac.za*
- Conciliation Resources (CR) *www.c-r.org*
- Crisis Management Initiative (CMI) *www.cmi.fi*
- Folke Bernadotte Academy (FBA) *www.folkebernadotteacademy.se*
- Foundation for Tolerance International (FTI) *http://fti.org.kg*
- Centre for Humanitarian Dialogue (HDC) *www.hdcentre.org*
- Initiative on Quiet Diplomacy (IQD)[36] *www.iqdiplomacy.org*
- Mediation Support Project (MSP), swisspeace and Center for Security Studies (CSS) ETH Zurich *www.swisspeace.ch* & *www.css.ethz.ch*
- Nairobi Peace Initiative (NPI) *www.npi-africa.org*
- Servicios Y Asesoria Para La Paz (SERAPAZ) *www.serapaz.org.mx*
- Southeast Asian Conflict Studies Network (SEACSN) *www.seacsn.usm.my*
- UN Mediation Support Unit (PMD/MSU)[37] *http://peacemaker.un.org/mediation-support*
- US Institute of Peace (USIP) *www.usip.org*
- West Africa Network for Peacebuilding (WANEP) *www.wanep.org*

36 IQD did not participate in developing this MSN commentary, as it was engaged in other activities at the time the document was being put together.

37 UN MSU did not participate in developing this MSN commentary, as they were involved in drafting the original UN Guidance.

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SWEDISH AGENCY FOR PEACE, SECURITY AND DEVELOPMENT

Southeast Asian Conflict Studies Network
SEACSN

FTI FOUNDATION FOR TOLERANCE INTERNATIONAL

cpm Center for Peace Mediation

"hd Centre for Humanitarian Dialogue
Mediation for peace

CMA
Centre for Mediation in Africa
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