

INTERNATIONAL RELATIONS AND SECURITY NETWORK
**MEDIATION AND FACILITATION
IN PEACE PROCESSES**



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INTRODUCTION

John Garang, former chairman of the Sudanese People's Liberation Army, once argued that the National Islamic Front (NIF) regime in North Sudan "could not be reformed, that they were too deformed to be reformed and must therefore be removed not improved."¹ Yet later he negotiated and signed the Comprehensive Peace Agreement with this same regime. What happened to enable such a dramatic shift from a strategy of war to a strategy of negotiation leading to a joint government with the former enemy? What was the role of mediation in ending a war that cost the lives of 2 million people?



This dossier focuses on the role of and potentialities for mediation and facilitation in peace processes in violent inter-group conflicts in countries such as Sudan, Nepal, Columbia, Mozambique, Angola, DR Congo, Guatemala, Indonesia and Burma to name but a few. It does not focus solely on track one intergovernmental mediation of peace agreements, but rather aims at a wider assessment of "mediations" and "facilitations" in peace processes, focusing on the multi-actor (IGOs, governments, NGOs, internal and external actors), multi-phase (pre-negotiation, negotiation and implementation) and multi-topic (governance, justice, security, society and economy) dimension of today's complex processes. The dossier's focus is broader than pure track one mediation, yet narrower than peacebuilding and conflict resolution in general.

Mediation is a way of assisting negotiations and transforming conflicts with the support of an acceptable third party.² Facilitation is similar to mediation (especially facilitative mediation), yet it is less directive. Unlike mediation, facilitation does not focus so much on decision-making, but rather on enhancing the mutual understanding of perceptions, interests and needs or preparing for joint action.

Since the end of the Cold War, mediation has been used in about 50 percent of all international crises.³

It generally leads to a five-fold greater probability of reaching an agreement compared to a non-mediated one, and a 2.4 times greater probability of longer-term tension reduction.⁴ The high acceptability from the side of the conflict parties, and low cost from the side of the third parties, are some of the reasons for the method's wide use. Besides mediation and facilitation, other approaches like sanctions, arbitration, civilian peacebuilding and military peace support operations can be used in a complementary manner as well.

This dossier provides an analysis, introduction of trends, rationales and lessons learned regarding mediation and facilitation methodology. It pools relevant resources on topics related to mediation and indicate where and what kind of third-party is active. The dossier also highlights the processes in which opponents move from fighting in the field, to fighting over the table, to realizing they can gain more through compromises and negotiations than through killing.

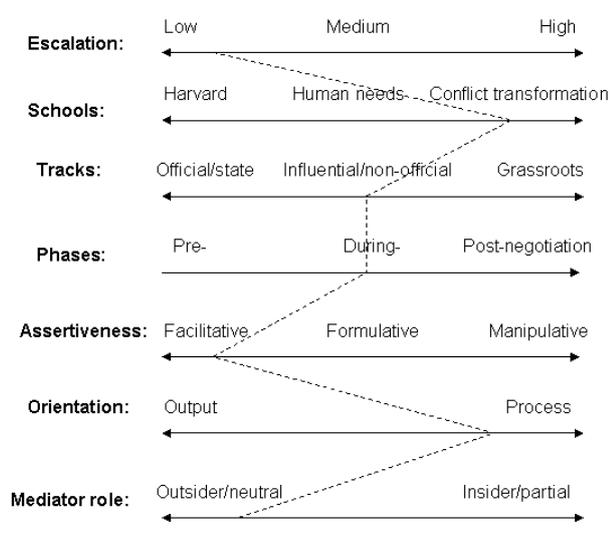
The first section of this dossier focuses on conceptual and general methodological approaches. One of the key methodological arguments is that various topics play a role in peace processes and that these topics need to be better interlinked in order to achieve sustainable peace. The second section then examines various topics related to peace processes, sorted by the sub-topics: mediating peace agreements, economy and environment, justice and governance, security and society. Each topic and its subtopics are briefly introduced, followed by a selection of documents and links that are accessible on the internet. While it is beyond the scope of this dossier to examine specific cases, the sections "databases", "news" and "references" from the online version provide links to external sources that provide basic material to study specific cases.

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CONCEPTUAL AND THEORETICAL APPROACHES TO MEDIATION AND FACILITATION METHODOLOGY

The following analysis provides an overview of various dimensions that are used to analyze mediation and facilitation, trends in international mediation and facilitation, rationales for the use of the method, and lessons learned on determinants on what makes the method effective.

Dimensions for Examining a Third Party Engagement



Dimensions of Analysis

Various dimensions can be used to help examine a mediation or facilitation effort, for example if the conflict is highly escalated or not, or if the mediator uses a very direct approach or not. In reality it is very difficult to fit a specific mediation effort to a specific category. These dimensions, however, can help us organize our intuition and thinking when examining a third party effort.

Numerous dimensions have been proposed to structure the analysis of mediation or facilitation. Some examples of such characteristics are:

Escalation:⁵ Escalation describes the dynamics of increasing tension between the conflict parties. The choice of third-party method depends on the level of escalation, generally the more escalated, the more interventionist the third party has to be.

Schools of thought: Various schools of thought or “worldviews” about how to resolve or transform conflicts have been described. Jean Nicolas Bitter proposes three distinct worldviews that influence how one approaches a conflict.⁶

- The most mainstream approach in the West is the “Harvard Approach”, which focuses on specific interests (why people want what they want) and uses negotiations to find a mutually-acceptable settlement to the different interests. Negotiations also seek mutually-acceptable criteria for assessing solutions. It tends to be content and output-oriented, and is based on an individualist worldview.⁷

- The “Human Needs Approach” refers to all needs-based approaches to (permanently) resolve the root causes of a conflict. It argues that some issues cannot be negotiated and no conflict can be dealt with in a sustainable way if the basic needs (for example recognition and identity) of the conflict parties are not satisfied. Universal needs are also seen as a bridge between different conflict parties. It analyses the problem and can be output, process or relationship-oriented.⁸

- Finally, the term “conflict transformation” refers to all relationship-focused approaches that view conflicts as culturally constructed realities. Conflicts are not just conflicts of interests, but of values, that take place in a specific cultural context. Conflicts can be motors of social change. Understanding the “language” and the terms of reference, is important to empower conflict parties and support recognition between them. This approach is process-oriented.⁹

Tracks: The various levels of decision-making and links between conflict actors have been described as tracks,¹⁰

- Track one (official, governmental and decision-making level),
- Track two (non official, but influential and linked to decision-makers), and
- Track three (grass roots and civil society).

Recently, one has also seen the use of the term track “1.5” which refers to processes involving both track one and track two actors, or track one actors working in their personal capacity.¹¹

Phases: Various phases are central to the analysis of mediation and facilitation in peace processes. One can differentiate between a pre-negotiation phase, a negotiation phase and the implementation phase.

- The pre-negotiation phase consists of building and keeping contacts and “talks about the talks”, sometimes over years or even decades.
- The negotiation phase is when the parties are actually sitting at the same table. Negotiating a cease-fire agreement may be one step before negotiating a peace agreement, that should support the development of a vision of society and includes political issues such as forms of power-sharing.
- The implementation phase often needs a great deal of “muscle”, often external military power in the form of peace support operations, to enforce what has been agreed to in the peace agreement. The peace agreement should bring the country out of a conflict and pave the way for the inclusion of more actors from society to shape the more definitive constitutional and institutional set-up. Elections are often one milestone in the implementation process, as peace agreements by their very nature lack democratic legitimacy.¹²

Assertiveness: Various mediation styles can be applied, varying in their degree of assertiveness: facilitative (minimal influence on content, focus on process and support of communication), formulative (focus on coordination and proposing solutions), and manipulative (creating incentives and disincentives, greater use of pressure and increasing the zone of agreement). Manipulative mediation (using incentives, such as money and disincentives, such as sanctions or bombs) seems to be more effective in reaching agreements, while facilitative mediation seems more effective in longer-term tension reduction.¹³

Orientation: Mediation can also be more oriented towards the output (settlement/evaluative/substantive/task-oriented) on the one hand, or towards the process (facilitative/procedural/socio-emotional/relational) on the other.¹⁴

Mediator role: Finally the mediator role is generally described in the West as being “outsider/neutral” and in other cultures more “insider/partial”.¹⁵ The trend seems to be moving from the argument that mediators need to be neutral, then to the idea that they should be impartial, then multi-partial, to now focusing on them being acceptable. While it is impossible to be fully-neutral or fully multi-

partial, the bottom-line is that a mediator has to be acceptable, and trying to be multi-partial may help but is not always a necessity. The US is arguably not an impartial player in the Middle East, nevertheless it is accepted by Israel and PLO-governed Palestine, as it is seen as the only third party that can deliver.

Post- Cold War Trends of Mediation and Facilitation

Besides the conceptual aspects influencing how we approach a mediation effort, there are also trends that affect present day mediations, and that should be considered when focusing on specific cases. The approach of labeling armed non state actors as “terrorists” for example, has become much more dominant in the post-9/11 context. The increasing standardization of peace processes and the tension between these standards and local norms is another trend influencing most present day peace processes.

Conflicts in the post-Cold War era are typically inter-state, often involving power and status asymmetry between conflict actors

Classical diplomacy on track one has limitations when dealing with non-state actors. A multi-track approach in mediation/facilitation is crucial. There is a great temptation to focus on the media-ready triumph of track one hand-shakes – even if it is clear that peace requires efforts at all levels of society; nearly half of all countries that have ended a civil war have fallen back into conflict within the first decade.¹⁶

Decline in armed conflicts, genocide and human rights violations since the 1990s

Possible reasons for this decline include the end of the Cold War, an increase in peacebuilding efforts of third-party actors (for example the UN), increase in state capacity and equitable economic growth.¹⁷

Mediation and facilitation has become a popular tool in the post-Cold war era

“According to International Crisis Behaviour (ICB) data, of the 434 international crises that occurred between 1918 and 2001, 128 experienced some form of mediation. While this is only a 30 percent rate of incidence during the entire period, when we narrow our focus to the post-Cold War era, we find that 46 percent of all crises were mediated.”¹⁸ According to one count using news sources, there were 3,452 mediation events in relation to 309 international conflicts between 1945 and 1995. About a third of these (1,040) in relation to internationalized ethnic conflicts.¹⁹

Increasing complexity of peace processes

Generally, mediators have moved from mediating a clear-cut agreement, to trying to develop a vision for society and a means to negotiate and consolidate this in the post-conflict phase – thus leading to longer and more complex processes.

Increasing number, diversity and competition of third-party actors

UN and other international organisations, states and NGOs, play – or seek to play – an increasingly important role in mediating intrastate conflicts.²⁰ Peace processes will have many different third parties involved. The coordination between these third-party actors is difficult. The harmonization of NGOs/states/IGOs role in the mediation setting is not clear. Generally, the lower level has the advantage of flexibility, working “below the radar”, the higher level has the advantage of “official” legitimacy and more power. There are cases where third-party competition has been detrimental to the peace process. Conflict parties are good at playing third parties out against each other – so third-party coordination is essential. “Groups of friends”²¹ is one way to coordinate the various third parties or at least keep all involved informed. Members of such groups should not have a major strategic interest in the outcome of the conflict and should be able to play a beneficial role in transforming it.

Increasing standardization of peace processes

While experience shows that no peace process is the same, “no size fits all” there is nevertheless an increasing standardization of peace processes. Human rights and international law are increasingly shaping peace processes. International standards and thresholds regarding human rights that mediated agreements have to fulfill may make the negotiating space narrower, for they may scare-off negotiators that have perpetuated human rights crimes. Here there is a difficult balance between the benefit of judging the top “criminals” on the one hand, and negotiating with these people to reach an agreement and change societal structures on the other hand. On the positive side, however, international standards allow mediators to delegate the issue of amnesty and impunity (for example no amnesty for war crimes, crimes against humanity or genocide) to the international community – in particular the International Criminal Court (ICC). Furthermore, human rights elements in an agreement tend to make peace more sustainable and deter offences. The challenge for mediation/facilitation is therefore often a question of sequencing, when and how to include the human rights aspects into the negotiations.^{22 23}

Increasing impact of the interests of various international actors on peace processes

International communities are not neutral, but have strong interests in the outcome of a peace process, as well as in how the process is carried out. Interests may concern support of one or other actor, security considerations (who to talk to, who to list as a “terrorist”), access to resources and economies and political prestige (where talks are held), etc.

Tension between internal and external legitimacy of peace processes

The process and outcome of a peace process has to be legitimate both in the eyes of the “local” actors, as well as for the international community. Since a lack of cultural diversity is at the root of many conflicts,²⁴ the internal legitimacy of peace processes have to be given great consideration, if they are to be sustainable.

Policy of ostracization instead of dialogue with armed non-state actors post-9/11

The post-9/11 situation has made the distinction between “terrorists” and “freedom fighters” more delicate. Some argue that isolation is the only way forward to avoid legitimizing armed non-state actors, others argue that dialogue does not mean a legitimization of means and ends, but rather keeping channels open, and is the best way to support moderates, avoid greater extremism and allow for transformation.²⁵

Rationale for Mediation and Facilitation

In this section some of the basic assumptions and the “logic” behind mediation are explored. One such key rationale, for example, is to differentiate between a person and the person’s behavior, thereby allowing for respect for people, even if one is horrified by their behavior. Another key belief shared by many mediators is that process and transformation is possible: people can change their behavior.

Mediation leads to a change of perspective, allowing for a change in positions

The key logic behind mediation is that conflict parties form their positions (what they want) as a reaction to how they perceive the positions of the other, whom they often have never met. Once at the table, hearing their opponent, parties begin to realize that their view of the other party was not fully correct – thus allowing them to adapt their own position and the development of mutually-acceptable options.²⁶ This process often requires the support of an acceptable third party facilitating communication and structuring the process.

Differentiation between the behavior and the person

Eliminating people is one way of dealing with behavior that goes against one's own interests – the “Savimbi approach,” (Jonas Savimbi was head of the UNITA movement and was killed by the Angolan government army after having signed and broken a peace agreement and having ignored election results).²⁷ Yet non-state actors may enjoy some form of political legitimacy and murder does not change the situation, as others then replace them. The mediation approach does not ignore ignoble behavior (for example human rights violations), but seeks to maintain respect for all people, irrespective of their actions. If respect for the intrinsic value of the “other” is no longer given, any work at changing or transforming the situation through mediation is not possible. The question of justice has to be dealt with, but often by other actors and at a different point in time.

Process and content are two separate levels that are linked, but are equally important

In the words of Fink Haysom “the right answer in the wrong process sinks like a stone.” Generally a facilitator or mediator will focus on the process, structuring and supporting it, while the content level is left to the attention of conflict parties and experts.

The use of mediation in violent conflicts is due to the “acceptability” of mediation

If a “fragile” state cannot take on the function of peacefully settling conflicts (through legitimate rules and institutions, a monopoly of power or a central authority) or if a conflict exists in the international “anarchical” context where there is no monopoly of power, then “...the processes by which international disputes are managed and (perhaps) settled have to be largely informal and largely depend upon their acceptability to those independent and “sovereign” entities engaged in the conflict. If they are not acceptable, they are not used.”²⁸ This also leads to the Golden Rule of mediation: the mediator has to be accepted/mandated by the conflict parties.

Mediation is acceptable, because it maintains the independence, sovereignty and freedom of choice of the conflict parties.

“Mediation seems (on the face of it) to offer a good practical method of managing conflicts and helping to establish some sort of regional or international order: It can do so because its very essence is guaranteed to guard the independence,

sovereignty and freedom of choice that all actors in conflict so jealously value.”²⁹

Attractiveness of mediation as an effective low-cost method. Mediation increases the possibility of successful negotiations and managing conflicts.³⁰

In relation to other ways of dealing with conflict, for example via military peace support operations (PSO), mediation is very cost-effective. It cannot be used alone, however, but as one tool among others. During the implementation phase, military PSO is normally needed to enforce the agreement.

Possible “soft-power” niche for small countries

Because the power of mediation lies in being acceptable to the conflict parties, it is a possible tool for small countries. They cannot compete on the international market in terms of hard power, yet here they have some room. Lack of power can be an added-value in that small powers are less threatening.

Rationale for facilitation as a complementary tool to mediation

Even if the conflict parties seek mediation and a negotiated agreement, these are often insufficient ingredients for sustainable peace. As peace processes become longer and more complex, greater variety of third-party support is required, thus there is a need for facilitation alongside any explicit mediation mandate. Mediation can also be used as a tool in an implementation phase, for example in bringing various actors together to discuss on how to “deal with the past”.³¹

Lessons Learned on Determinants of Successful Mediation and Facilitation

This section includes some of the experiences on “what works” and “what does not work.” This partly includes some of the aspects in the previous sections, however, they are more directly drawn from cases studies as well as large “n” empirical studies. One of the key lessons, is that mediation works - it increases the likelihood of reaching an agreement and easing tension in the long term.

Political system: The political system does not seem to have a great impact on the success of mediation (democracies generally use mediation with non-democracies). Mediation is most effective when parties have equal power. The previous relationships have a strong impact on the outcome of mediation.³²

Type of conflict: The nature of dispute has an influence on mediation success: security (40 percent chance of success), ideology (50 percent), sovereignty (44 percent), resources (70 percent), ethnic (66 percent). Conflicts with low fatalities (up to 500 dead) are more likely to be successfully mediated than ones with a high number of mortality (such as 10,000).³³

Ripeness: The timing of a mediation effort and the conflict “ripeness”³⁴ also seems important, various aspects have been suggested: When actors have reached a mutually-hurting stalemate,³⁵ depending on escalation level,³⁶ depending on the BATNA/WATNA (Best/Worst Alternatives to a Negotiated Agreement)³⁷ and/or when incentives /disincentives have changed.^{38 39}

Personality: What impact does the nature of a mediator have? It seems the emphasis on impartiality is misleading, more important is the ability to extend the interests of the parties. Legitimacy is one of the key forms of leverage, high mediator’s rank, as well as a mediator’s previous relationship with the conflict parties. Experienced mediators are more successful than non-experienced ones.⁴⁰ Personality also plays a key role, for example the capacity to listen, empathize, patience, perseverance and robustness under verbal assault.⁴¹

Coherence of parties: Mediation is more difficult without recognizable leaders within the conflict parties, more difficult with internally-divided conflict parties, with spoilers and the involvement of major powers.⁴²

Pressure and dialogue: The dialogue approach at the heart of mediation is complementary to the use of power.⁴³ In many cases a joint effort of pressure and dialogue are needed to get parties to move: yet the person carrying the threat should not be the same person mediating. The important thing is that various actors take on different roles, and that these may have to change from one phase to another. The implementation phase needs a lot of power, a mediator should generally not be involved in implementing an agreement that he/she has been involved in during the negotiation phase.⁴⁴

Support local cooperative efforts: Facilitation does not use power and therefore has to focus on supporting local energy; if this is not present, the facilitator should leave. It is vital for a facilitator

to watch the relations before starting to influence them. Lederach calls this web-watching before web-building.⁴⁵

Personal relations are the key to trust and being asked to mediate a conflict.⁴⁶ The pre-negotiation phase may take a very long time (that is decades), where the main aim is to keep a foot in the door, keep the conflict parties linked to another reality and to build trust.

One of the main internet resources on mediation and facilitation methodology, summarizing numerous books on the concepts and theories, is based at the University of Colorado’s Conflict Research Consortium; in particular Beyond Intractability and the Conflict Resolution Information Source. Other key sources are INCORE on topics related to peace and conflict and the PILPG, for example for peace agreements online. Further sources can be found in the dossier sorted by topics, databases, news and full list of references and resources.

MEDIATING PEACE AGREEMENTS

The use of mediation and facilitation in a peace processes requires the consideration not only of the method in and of itself (as described in the Analysis section), but also a range of other overlapping topics. The rationale for examining these topics is based on the experience of a “mediation gap” between the use of mediation and mediative approaches in the core business of mediating peace agreements on the one hand, and its (still limited) use in the other fields relevant to an effective peace processes.

This section investigates issues related to conflict analysis, armed groups, third parties and peace agreements. Conflict analysis, conflict warning systems and conflict indicators (conflict analysis and geopolitics) study the emergence, escalation and de-escalation of tensions. Special focus is given to the various state and non-state actors using violent means in trying to reach their political interests, as well as the various third-party actors that become involved in the conflict to assist the parties in negotiating an agreement. The most typical product of third-party assisted negotiations are cease-fire agreements ending hostilities and the more complex peace agreements outlining new structures and institutions on how to share power and deal with differences in a non-violent manner.

Conflict Analysis and Geopolitics

Conflict analysis is one of the first steps before a third party becomes involved in mediation. Besides focusing on analyzing hostilities, this must also assess whether cooperative relations still exist between the conflict parties, as well as local and external efforts supporting these. Analysis varies greatly depending on the time-scale and level of conflict (for example local, regional, state or international). Often the links between these levels are extremely important but neglected.⁴⁷ Parties often only enter into serious negotiations when they are pressured to do so, when unilateral means of achieving a satisfactory result are blocked. At that “ripe” moment – often in a “mutually hurting stalemate” – parties are more amenable to alternatives.⁴⁸ Conflict analysis, among other things, seeks to understand the alliances and hostile relations between various actors as well as their respective interests, means to reach these interests, perspectives of each other and the issues at stake. Various systems of early-warning of conflict have been developed; generally, the problem is not a lack of knowledge, however, but a lack of adequate action. Geopolitical considerations should also be factored in, such as the influence of regional power blocks, particularly influential states, historical relations or the availability of natural resources (for

example oil). In this dossier “conflict” is understood to mean an incompatible interaction between two or more political groups, where one or both actors are intentionally damaged by the other actor through the use of violence.



Armed Groups

SIPRI characterizes armed groups as “non-state actors that include, but are not necessarily limited to, rebel opposition groups, local militias and warlords, as well as vigilante and civil defence groups, when such are clearly operating without state control. The diversification of violence and prevalence of multiple armed groups complicates traditional conflict management and resolution, and poses a significant challenge for international security governance more generally. Most contemporary conflicts are intra-state, involving by definition at least one non-state actor, and many are fought without state involvement, between two or more armed groups. Nevertheless, international laws and norms governing the use of force are still understood primarily on the state level.”⁴⁹

Mediation and facilitation in peace processes mostly involve one or more armed groups. Key questions for a mediator are to what degree armed groups have a political agenda, or excuse of a political agenda, to distinguish them from organized criminal actors, as well as if the tacit agreement of the host country or international community is needed before engaging with such actors. The mediation approach argues that a lack of engagement generally strengthens hardliners and these groups

often hold the key to ending violence. Some form of – often informal – contact with the outside world helps to prevent their logic from going askew. The limits of engagement are therefore less viewed in a principle, in the “unethical” nature of the armed group, but rather in a pragmatic assessment of how beneficial dialogue is estimated to be in a specific situation.

Third Parties and Multi-track Diplomacy

Third parties are actors that become involved in a conflict to help the involved conflict actors deal with the conflict in a constructive manner. These can be internal actors from the conflict setting, NGOs from civil society, other states, regional organizations and intergovernmental organizations such as the UN. The need to have multiple actors is at the heart of the multi-track approach, which argues it is not only government diplomats that are needed to deal with conflict (as was typical in the Cold War setting), but various third parties on all levels of society. Coordination between the various third parties is essential to avoiding a waste of resources or even doing harm. “Groups of friends” involved in a process, as well as other ways of keeping each other informed, is therefore essential.

Peace Agreements and Cease-fire Agreements

Peace agreements are contracts negotiated under very different premises, but generally seek to bring conflict parties and their respective societies out of a situation of conflict and pave the way to a more sustainable peace. They are not democratically legitimized. They are generally more comprehensive than cease-fire agreements, as they tend to include political aspects. In some cases, elements of the peace agreement will be integrated into the transitional arrangements and may even end up in the final constitution after a process of adaptation and political legitimization. About half of all peace agreements fail, therefore the need to be very clear about the implementation modalities already in the agreement (“the devil is in the detail”), as well as agreeing on mechanisms to ensure its forceful implementation (for example UN peacekeeping, peace enforcement). A comparison of peace agreements is helpful to provide ideas, however, one idea pulled out of its context is often inadequate in another context. The degree to which a peace agreement reflects and is based on local knowledge, history and customs is an essential determinant of its effectiveness.

Cease-fire agreements are signed to suspend hostilities and generally consist of three steps: 1) ending the fighting, 2) moving the troops out of the zone of combat, and 3) making sure they hold their position. They are far less comprehensive compared to peace agreements, but are often a key step on the way to peace agreements that deal with political issues. A cease-fire agreement that is not followed up by a political process often fails.

Training for Mediators and Facilitators

Mediation techniques can be learned, even if personality and experience are perhaps more important in shaping the effectiveness of a mediator/facilitator. Basically two types of trainings are possible: a more academic/theoretical approach; and a more interactive/workshop-based method, where interpersonal skills, communication strategies and role-playing exercises are dominant tools. Training can also be differentiated between mediation/facilitation training in the micro-/interpersonal field meso-/organizational field, and macro-political/international context. Some of the techniques are the same, but there are also major differences, such as the scope of violence, use of power, context knowledge and the legal framework. Besides mediation and facilitation in the narrow sense of the word, conflict analysis, personal conflict behavior and negotiation strategies should all be part of a comprehensive training.

ECONOMY AND ENVIRONMENT

Aspects of wealth sharing, resources, unsustainable development and “war economies” create particular dynamics that need to be tackled to find effective solutions to ongoing conflicts. Development aid and the role of business can create situations in which conflicts escalate or continue, despite the best of intentions. On the positive side, however, they can also create incentives for peace and are essential in rebuilding economies and a stable society.

Wealth Sharing, Environment, Resource Conflicts and War Economy

“No peace will be secure unless it is grounded in equitable sharing of scarce resources or offers a sustainable future for all concerned.” Malcom Rifkind, former UK Foreign Minister. Environmental conflicts can be caused by the indirect or direct use of natural resources. “Indirect use” conflicts arise in connection with the production and trade



of natural resources for the global market, for example, timber, fish, mineral oil or diamonds. Especially oil and other lucrative natural resources are sometimes related to the onset, intensity or duration of armed conflict and civil war.⁵⁰ Armed groups and states need money to wage war, often gained from marketing lucrative natural resources. The world’s energy supplies during the next 30 years will continue to depend on fossil energy resources. An increase in geographical concentration of the remaining oil and gas reserves in the Middle East has been identified – thus a global economic dependency on the stability in this region.” Direct use” conflicts on the other hand arise in relation to the actors directly using the resource, for example for agriculture. These kinds of violent conflicts over water and land are generally found on a local scale in countries with subsistence agriculture, with weak economies and political instability.

Various approaches at labeling “conflict free” resources, such as the Kimberly Process for diamonds or the Extractive Industries Transparency Initiative (EITI), are central to end and prevent

conflict by excluding conflict actors from the market and creating more transparency on how the natural resources revenues are used. In the long run, however, only sustainable resource consumption – especially in affluent countries – will address the root causes of conflicts related to resource usage. While focusing on an individual conflict, it is therefore vital to keep an eye on the global economic set-up benefiting or limiting the financing of conflicts. The sharing of wealth (for example oil resources) can be a major issue in a peace agreement. Often the way forward, as in the Sudanese Comprehensive Peace Agreement of 9 January 2005, is to share the benefits of the oil revenues, rather than the oil resources per se.

Business and Development

A study by the World Bank shows that civil war is more probable in countries that experience economic decline, low and unequally distributed income, and that are highly dependent on primary exports (for example natural resources).⁵¹ Lack of development can cause conflicts, but the process of development can also cause conflicts in its own right. Thus, there is the need for a conflict-sensitive development approach, “do no harm,”⁵² if development is to be successful and the costs of these conflicts are to be reduced.^{53 54} The role of business in relation to peace and conflict is an evolving field; not least of all due to the increasing role multinational companies play in many areas of the world. On the one hand, business actors are interested in stability and peace, and central to post-negotiations reconstruction of a country. On the other hand, business can at times also benefit from conflict and instability, and therefore there is a need to regulate business actors.

JUSTICE AND GOVERNANCE

The role of international law in the settlement of intrastate or interstate conflicts is becoming increasingly important. Transitional justice and addressing the past is key to creating cultures of peace. The same people and institutions that must create peace have often perpetrated grave injustice in the conflict. How to integrate notions of human rights and functioning institutions into the governance model is a challenge that requires an in-depth understanding of local codes and practices and how the local integrates into international norms. Building strong institutions and governance structures plays a critical component in preventing a return to violence and creating the conditions for long-term stability.

Governance, Institution Building and Creating Long-term Stability

“Building peace in a post-conflict situation is perhaps an even greater challenge than ending a war. Almost half of all post-conflict states fall back into violent conflict within a decade. Yet this is avoidable: Experience shows that there are ways to rebuild the fabric of societies and create institutions that enhance sustainable peace.

Peace agreements often form the conceptual basis for the subsequent governance structures and stipulate the specific division of power, resources, representation or autonomy that will be built into the emerging governance and institutional structures of societies. These peace agreements and interim arrangements, however, often lack democratic legitimacy, yet they are important in paving the way to these more definitive constitutional and institutional set-ups. Thus, building successful and lasting governance and institutional structures for societies that have experienced significant levels of violence and unrest hinges not only on the peace process but on several other factors.

The creation of a constitution is a key component. Constitutions “define the polity, they set the rules of the relationship between the state and its citizens; they fix and reflect the social contract that underpins the functioning of an organized society.” There seems to be a trend from long-lasting constitutions, to those that are more frequently amended. Often there is also a need for interim arrangements between the peace agreement and the “final” constitution.

Human Rights

“If you accept these kinds of jobs, you go and mediate between warlords, faction leader, bandits, all sorts of people, people whom the human rights purist want to see hang. What I tell them is, ‘Let me finish, and then go ahead and hang



them.” Lakhdar Brahimi is quoted as saying.⁵⁵ The United Nations Universal Declaration of Human Rights entrenched the concept of humans having universal rights regardless of gender, location or ethnicity or nationality. Human rights are based on the notion that there is inherent human dignity, which should be respected universally and is inalienable in character. While there is a universal dimension to human rights, the problem is often in the lack of a culture-sensitive terminology and manifestation. Imprisonment, for example, is viewed in some cultures as a far worse form of torture than beating.⁵⁶

By its very nature, human rights are at the heart of mediation and facilitation of peace processes. However, if charged and explicitly labeled as human rights violators too early in the process, there is a danger that the conflict parties will stand up and walk out. The conflict then continues and no service is done to human rights. Thus, the question is not so much justice and human rights versus peace, but a question of sequencing, bringing human rights on board at the right moment and in the right form.

Transitional Justice, Dealing with the Past, Reconciliation

The repression and violence that occur during a conflict leave a mark on all efforts at building sustainable peace. If the past is not adequately dealt with, there is the danger that it will repeat

itself. Transitional justice involves judicial and non-judicial means. The “truth” must be acknowledged. The process of dealing with the past must be legitimate in the eyes of the local civil societies. The culture of violence as a means of dealing with conflict needs to be transformed, and the goal of depolarizing the society needs to be kept at the forefront. These tasks call for a multitude of mediation efforts between various actors and on various issues.⁵⁷ The International Center for Transitional Justice works along five main lines: prosecuting perpetrators, documenting and acknowledging violations through nonjudicial means such as truth commissions, reforming abusive institutions, providing reparations to victims and facilitating reconciliation processes.⁵⁸

International Law

No present-day peace agreement has international support if the conflict parties agree between themselves on amnesties regarding war crimes, crimes against humanity or genocide. Amnesties allowed under international law are those applied to insurgent forces for belonging to, or fighting with, insurgent forces and minor crimes associated with rebellion.⁵⁹ The International Criminal Court (ICC) is one of many possible avenues of seeking justice and applying the rule of law to individuals accused of the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes. Mediation and negotiation in peace processes are intimately tied to concepts of justice and law, and some observers have argued that the evolution of the ICC has made mediation and negotiation harder as “blanket amnesties” for crimes committed by conflict parties are no longer possible. On the other hand, the ICC has also clarified the framework mediators must work with and has allowed mediators to delegate some of the difficult issues to the international community. Thus, a mediator can never give a blanket amnesty, but he or she can sequence when these issues are dealt with in the process so that they are not a burden to a process. Human rights issues may effectively only be explicitly brought up (that is labeled as such) in a negotiation process after the point of no return, such as when substantive issues have been dealt with, or when it is very likely parties will reach an agreement, so that it is less likely the conflict parties will walk out.

SECURITY

Creating the security necessary for the emergence of peace requires guarantees that violence will not return. Frequently the UN, among others, has played a central role in this with the deployment of peacekeeping and/or peace-enforcement forces. Disarmament, demobilization and reintegration (DDR) of combatants, as well as security sector reform (SSR) are two essential processes in stabilizing a post-peace agreement situation. Both DDR and SSR typically require the support, but not imposition, of the international community to assist this process and give the assurances necessary for it to be successful.

Disarmament, Demobilisation and Reintegration (DDR) and Small Arms and Light Weapons

The United Nations Development Program (UNDP) defines disarmament, demobilisation and reintegration (DDR) as a multi-faceted exercise requiring a multi-dimensional response that seeks to demobilize and reintegrate former combatants, militia and retiring members of the armed forces or groups into society. DDR is not just about providing alternative sources of income; it is vital that former combatants receive some psycho-social support in order that they may reintegrate into their communities and effectively adjust to life during peacetime.⁶⁰ During the mediation of a peace agreement, it is important to shape the basis for a successful DDR process, often this entails allocating resources to communities to provide for education and infrastructure to integrate former combatants, rather than giving money directly to them.



A component of DDR is the problem of small arms and light weapons (SALW). The problem of the growth and uncontrolled spread of SALW has gained importance on the international agenda over recent years. This is a logical conclusion of its negative consequences: destabilization of complete regions; escalation, growth or the prolonging of conflict; the hindering of peace operations and humanitarian assistance; the thwarting of post-conflict reconstruction and development; and the contribution to organized crime and social violence. These weapons – both legal and illegal – can present grave dangers to national governments

and to international and regional peacebuilding efforts.

Security Sector Reform (SSR)

Military and police forces often play a contrary role during a conflict, are often involved in human rights violations and often clearly aligned to one or the other of the conflict parties. Security sector reform in a post-peace agreement phase often entails a process in which the armed forces from both sides of the conflict are integrated, trained and their respective institutions adapted and democratically legitimized. If SSR is not successful, there is a far greater probability of violent conflict reemerging.⁶¹ During the mediation of a peace agreement, the basic outline of future security arrangements are laid; often it is important to create mechanisms that can evolve during the implementation phase to take up new issues as they arise.

Peacekeeping and Peace Enforcement

Peacekeeping and peace enforcement are codified respectively in Chapters 6 and 7 of the United Nations Security Council resolutions.⁶² Peacekeeping refers, according to the UN, “...to a United Nations presence in the field (normally involving civilian and military personnel) that, with the consent of the conflicting parties, implements or monitors arrangements relating to the control of conflicts and their resolution, or ensures the safe delivery of humanitarian relief.”⁶³ Peacekeepers monitor and observe peace processes that emerge in post-conflict situations and assist conflicting parties with implementing the peace agreement they have signed. Such assistance comes in many forms, including promoting human security, confidence-building measures, power-sharing arrangements, electoral support, strengthening the rule of law, and economic and social development.⁶⁴ Under Chapter 7 of the UN Charter, the Security Council may take peace enforcement measures in reaction to a “threat to the peace, breach of the peace or act of aggression.” It authorizes the interruption

SOCIETY

Mediation and negotiation typically occurs between a few elite people who represent groups with divergent interests. However, violent conflict impacts every individual in the broader society. Engaging the public and broader society to accept and work with a settlement negotiated by an elite is often a key challenge. If this does not occur, however, any settlement will lack legitimacy and will find limited acceptance by the larger populations. Forced migration creates tensions both in the recipient communities and societies, as well as when those forced to migrate return “home”. Gendered perspectives of mediation and negotiation processes increase effectiveness in finding solutions to violent conflicts, as women and men play different roles and have different needs - be they actors or victims. A violent conflict’s impact on children can create a situation that ends in conflict resurgence years in the future. Furthermore, conflict can become embedded in the various cultural norms, which are often neglected in an increasing standardization of peace processes. The role of religion can often be a means to allow for the acceptance and understanding of differences, or at the other extreme be used as a means to instigate conflict.

Public Participation and Degree of Inclusiveness

The degree of inclusiveness of a mediation process is a key challenge. If there are too many people at the negotiation table, delegates talk to the audience rather than to each other. The other problem is the choice of criteria for whom to include and exclude. Often power (that is armed force) is a decisive factor. The involvement of greater segments of society in a peace process, often run by an elite that is not democratically legitimized, is essential to increase the scope of issues addressed and thereby make any negotiated agreement more legitimate and supported by society. The challenge is how to do this when the negotiating elite is not in favor of it and clear representatives of civil society are difficult to identify. Often the various conflict parties agree to bring “their civil society” on board, but these do not necessarily reflect society. One way is to create mechanisms (for example setting quotas for representatives of civil society that are not at the negotiation table) that enhance greater public participation both during the process (for example on topics, public hearings, consultations, etc.), as well as afterward during the implementation phase. Peace agreements are not democratically legitimized, thus the need for elections and institutional reform during the post-peace agreement phase.

Forced Migration

The International Association for the Study of Forced Migration (IASFM) describes forced migration as a general term that refers to the movements of refugees and internally-displaced people (those displaced by conflicts) as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine or development projects. Generally, it is considered that there are

three types of forced migration, which, although they can be interrelated, are categorized by their causal factors. The causal factors are: conflict, development policies and projects, and disasters. Forced migration is a complex, wide-ranging and persistent phenomenon.⁶⁷ The diasporas play a key role in many conflicts, often as important sources of information and financing of both conflict and peace efforts. The repatriation of refugees after a conflict is another major issue that influences post-peace agreement stability.

Gender and Women Involvement

Women and men are both actors and victims in armed conflict and peace processes, yet they play different roles, and these differences need to be considered to be able to react adequately to reality. (See UN Security Council Resolution 1325 Women Peace and Security, 2000.) Women are often among the most vulnerable victims of an armed conflict. In many conflicts rape is systematically used as a weapon against women, girls and to a lesser degree also against men and boys. Besides the direct physical and psychological trauma, these victims are often afterwards also socially marginalized.⁶⁸

The culture and context-sensitive inclusion of more women mediators and more women delegates in mediation and facilitation engagements leads to increased efficiency and strengthens legitimacy and outreach. For peace processes that ignore half the population have less hope of popular and sustainable support. Measures are also needed to raise awareness on gender stereotypes (for example cultural attributions of differences to the masculine and feminine). A gender-sensitive approach to peace processes also means that a pure track one focus (even including more women)

is not enough. Public participation from all tracks and both genders is essential. Gender is not always best introduced into a male-dominated negotiation process explicitly as “gendered”, it may be more effective to introduce a topic like “victims” or “land ownership”. Then, one will automatically have to deal with the specific role of women and mediators can then invite women into the process to speak with their own voice.

Culture and Religion

Culture is one of the main bases of identity. Without the recognition and the respect for the dignity of all cultural identities, there can be no lasting peace, no development and no harmonious cultural change. If respect for a person’s culture is not given or a person’s identity is attacked, the person may retaliate to survive psychologically or physically. Lack of respect for cultures can lead to war. Respect for cultures does not mean ignoring aspects of a certain culture that have been identified as “problematic” by representatives of this culture - it is much more a question of how to address them. The answer is through dialogue based on knowledge and respect. A culturally-sensitive approach to mediation and facilitation in peace processes also means using language that communicates, rather than moralistic language that condemns (that is some aspects of Western human rights terminology). Art can play an important role in a society’s expression of the inner experiences of a conflict and can thus play a key role in healing in a post-peace agreement phase. Furthermore, art can be used to counter violence, in the words of Alexandr Solzhenitsyn:

“[...] [V]iolence does not live alone and is not capable of living alone: it is necessarily interwoven with falsehood.” [...] “Falsehood can hold out against much in this world, but not against art. And no sooner will falsehood be dispersed than the nakedness of violence will be revealed in all its ugliness - and violence, decrepit, will fall.”⁶⁹

There is a cultural dimension to religion in the sense of shaping a person’s value system, but there is also something more. One can differentiate between two ways of understanding and living religion: one takes a more legalistic perspective of religion; the second takes a more mystical perspective of religion, that unites and focuses on healing

relationships. The first understanding of religion can be manipulated to channel people’s energies into violence, creating enemy images. At its most dangerous, religion can give conflict parties a sense of superiority and legitimacy, of fighting “with God on our side.” For the vast majority, however, the “Golden Rule” (treat other people as you would like to be treated) of world religions tends to foster peace and not violence. The second, more mystical and relationship-oriented form of religion is best described by Gandhi:

“Quite selfishly, as I wish to live in peace in the midst of a bellowing storm howling around me, I have been experimenting with myself and my friends by introducing religion into politics. Let me explain what I mean by religion. It is not the Hindu religion, which I prize above all other religions, but the religion which transcends Hinduism, which changes one’s very nature, which binds one indissolubly to the truth within and which ever purifies.”⁷⁰



Media

The media play a key role in every mediation process and often it can often wreck it. At an early stage of a process, the parties generally agree that nothing will be said to the press without common agreement of all attending the process – but parties very rarely stick to this agreement. Leaking information is mostly done deliberately, with a specific aim, for example to test an idea before committing to it or to continue fighting the opponent in the media. Press conferences that are hosted by the mediation team can be one way of keeping the press informed, without jeopardizing the sensitive nature of a mediation process. On the positive side, a non-biased media can enhance public participation and information, and therefore

help to discuss and reflect key issues under negotiation.

Children

Children are among the most vulnerable victims in armed conflicts. Child soldiers are used in many conflicts, and although they themselves are “aggressors” in this role, they are still victims as they were abused before becoming soldiers. Direct violence against children, poverty and access of rebel groups to camps of refugees and internally-displaced people,⁷¹ are some of the factors that play a role in “recruitment.” The use of child soldiers and militias in armed conflicts raises serious problems also in the post-peace agreement phase, as many of these youths have never been “normally” socialized, and thus they do not need to be “reintegrated” into society, but socialized in the first place.

Facilitation of Dialogue Workshops

Complementary to track one mediation of peace agreements, there are a range of other actors and topics that need to be addressed. One way of doing this is through dialogue workshops (often also called “problem-solving workshops”). The moderator or facilitator is less interventionist compared to a mediator and the focus is less on decision-making than it is during a negotiation. Dialogue workshops often seek to support the understanding of the other’s perspectives, joint analysis of the conflict, and/or brainstorming and preparing joint actions. A dialogue workshop may take 2-5 days, where participants generally meeting in an informal setting, using the Chatham House Rules.⁷² A series of workshops has shown to be important so relationships and perspectives can develop. The choice of participants is crucial: Ideally, these are people who are influential, with good connections to decision-makers or society (for example academics, NGOs and journalists), flexible and knowledgeable about the conflict. Initially, moderates may be preferable to get the process started, an increase in variety of positions (moderates to hardliners) and tracks (from grassroots to government) can increase effectiveness of the process as it develops. Such dialogue workshops often benefit from being one of many parallel activities, for example training workshops, joint publications.

For links to recommended reading and internet resources, please visit the online dossier “Mediation and Facilitation in Peace Processes”: <http://www.isn.ethz.ch/news/dossier/mediation>.

ENDNOTES

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