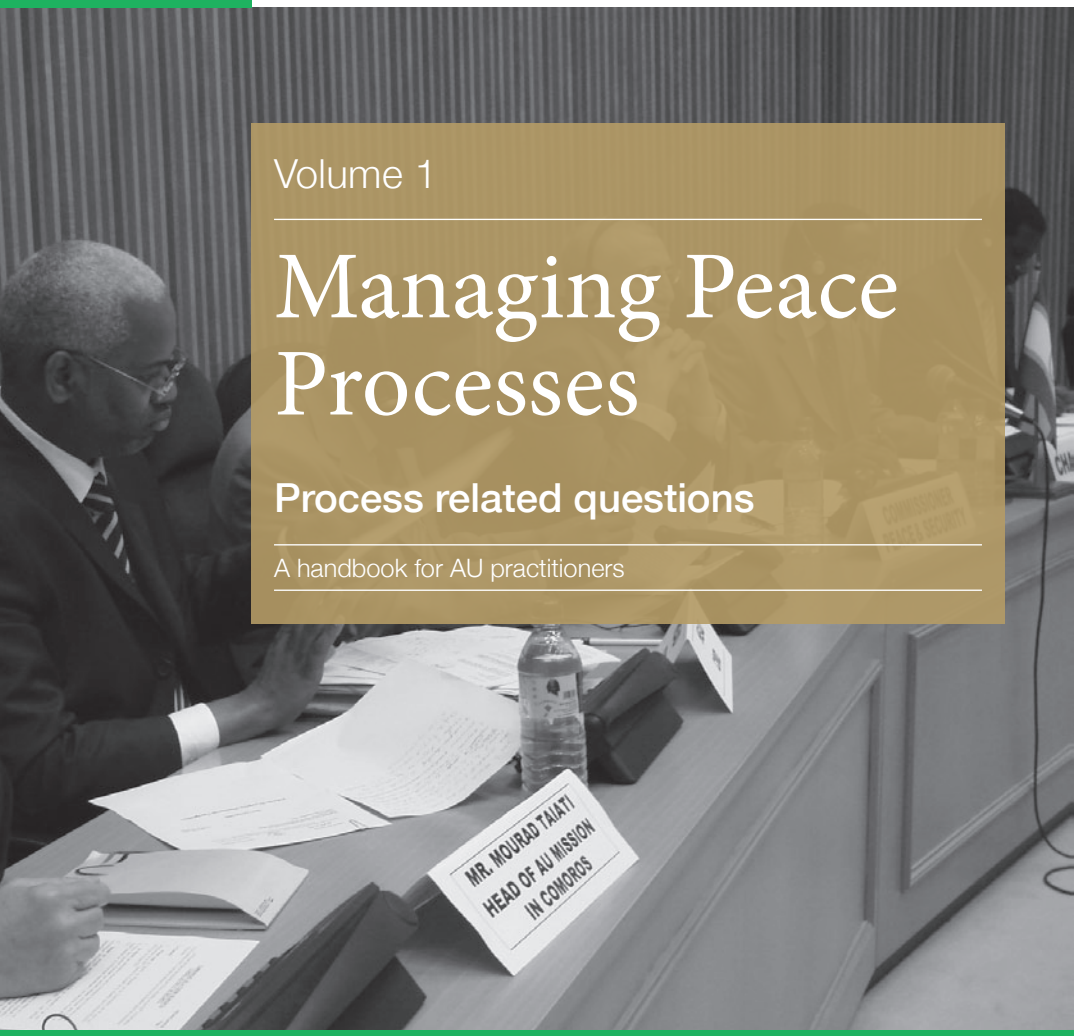

Volume 1

Managing Peace Processes

Process related questions

A handbook for AU practitioners

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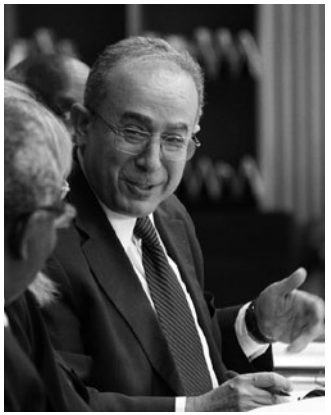
Foreword



The African Union (AU) was borne out of the collective will of its Member States to deepen and consolidate peace, security and development throughout the continent. The promotion of peace and security by the African Union is underpinned by a comprehensive approach that promotes tackling the root causes of conflict. This approach is based on good governance and the rule of law, respect for human rights and poverty alleviation.

On this basis, the OAU Mechanism for Conflict Prevention, Management and Resolution was established in Cairo in 1993 to pave the way for more effective approaches to conflict resolution on the continent. In addition, the establishment of the Peace and Security Council in Durban in 2002 gave the AU a dedicated framework for undertaking its work on conflict prevention and resolution: the African Peace and Security Architecture (APSA). The Architecture has the Peace and Security Council (PSC) as its key pillar, supported by the African Standby Force (ASF), the Continental Early Warning System (CEWS), the Panel of the Wise and a Peace Fund.

Over the past few years, the AU has decided to put in place tools and procedures for its staff and Envoys to learn better from the past experiences of the AU, and others, in peacemaking and conflict prevention. In line with such commitment, we have worked with member states, partner organisations and other regional and multilateral bodies to promote information sharing to the benefit of our staff and Envoys. Case studies have been compiled, rosters are being developed, joint planning and learning sessions are continuously being held, and Standard Operating Procedures for mediation support as well as a knowledge management framework are now in place.

The present handbook contributes to this ongoing effort. Peace processes are challenging and long term and the AU, like others, has had to struggle continuously to keep some of these processes on track, open new paths of dialogue among conflict parties, devise confidence-building measures, mediate once conflicts have broken out, and assist in the implementation of peace agreements.

I warmly encourage all my AU colleagues involved in peacemaking to read this handbook which, I am confident, will contribute positively to our work. In the process leading to its publication, prominent authors and experts have compared notes and engaged in passionate debates to provide us with practical analysis and comparative expertise related to the management of peace processes. The handbook tackles difficult questions that each of our colleagues involved in peace talks must grapple with at one point or another. Divided into thematic and process chapters, illustrated by practical and recent examples, this handbook seeks to provide African peacemakers with reference material, as they search for ever-more creative and efficient African solutions to African problems.

Ambassador Lamamra
AU Commissioner for Peace and Security

Contents

Introduction

This mediation handbook was put together in the wave of increasing recognition by the African Union of the need for peacemakers throughout the continent to have easy access to comparative experience. Hence, this handbook compiles material focusing on key issues that mediators encounter in their work.

Selected chapters of this handbook have been the object of passionate debates. How to move away from a normative approach? How to be comprehensive yet make information accessible in a concise format? How best to combine policy and practice to come up with practical, actionable advice?

The AU mediation handbook has sought to answer these questions and more in three volumes. This present publication is the first of the three volumes. It examines process questions – seemingly intangible yet crucial aspects of every peace process. Volume II looks at thematic questions that keep surfacing in most processes while Volume III focuses on how to make peace processes more inclusive. Each chapter has been written from the point of view of a mediation team, in order to discuss practical challenges peacemakers face, as well as some options at their disposal. Each chapter includes short case studies and reference material specific to each given topic.

Chapter One, written by Konrad Huber, introduces a number of key mediation concepts and looks at how conflict analysis and information management could be used more effectively in peace processes. This chapter builds on extensive interviews with peacemakers involved in current African crises. The chapter was reviewed by Simon Mason, Fabienne Hara and Luc Chounet-Cambas.

Chapter Two, by Stefan Wolff, examines process options that mediators can tap into in order to structure a negotiation process. The author specifically looks into nine areas of conflict settlement and learning from recent practice. This chapter has benefitted from inputs by Connie Peck, Matthias Siegfried and Cathy Shin.

Simon Mason and Matthias Siegfried co-produced Chapter Three, looking at confidence-building measures, their scope and effectiveness in recent peace processes. The authors would like to thank Julian T. Hottinger, Laurie Nathan, and I. William Zartman for their valuable inputs throughout the writing process. They would also like to thank: the Department of Sustainable Democracy and Special Missions of the Organization of American States; Patrick Gavigan and David Gorman for their reviews; and Britta Nicolmann and Luc Chounet-Cambas for their efficient co-ordination. In addition, the authors would like to express their appreciation for the support of the Mediation Support Project (a joint project between swisspeace, Bern and the Center for Security Studies ETH Zurich, initiated by the Swiss Federal Department of Foreign Affairs).

Chapter Four was written by Michael van Walt van Praag and Miek Boltjes. Michael and Miek both work at Kreddha, the International Peace Council for States, Peoples and Minorities (www.kreddha.org), a non-profit organisation dedicated to the prevention and sustainable resolution of (violent) conflicts between population groups and the government of states within which they live. This chapter focuses on ways and means of strengthening the implementation of peace agreements and, hence, contributing to their sustainability. The chapter has benefited from inputs from Anthony Regan, Devasish Roy, Paul Williams and Francesc Vendrell, for which the authors are much indebted. Gilbert Khadiagala and Arist Von Hehn kindly provided further comments as part of the review process.

In chapter Five, Catherine Barnes examines how sanctions and incentives have been used in recent peace processes, and to what effect. Drawing on the author's previous work on the topic, as well as specific examples, the chapter highlights the very circumstances under which sanctions and incentives can be combined most effectively in support of mediation endeavours. The author is grateful to Mikael Eriksson for his technical feedback.

This handbook could not have been made possible without the support of the HD Centre over the past two years: Stine Lehmann-Larsen who mobilised resources to make this and other projects possible; Luc Chounet-Cambas who edited the handbook; Katia Papagianni who came up with the original concept; their colleagues from the regional office in Nairobi; our African Union colleagues who supported them in this endeavour, Yvette Ngandu and Lulit Kebede; language editor Nina Behrman, Francois-Xavier Bernard and his team for the French translation, and Nicolas Ducret for the design and layout.

Mr El Ghassim Wane
Head, Conflict Management Division

Chapter 1:

Conflict analysis in peace processes: pitfalls and potential remedies

Konrad Huber

1.1 Introduction

This chapter looks at conflict analysis as an essential tool for a mediator to prepare for a peace process. It is also an indispensable method for a third party to remain continually cognisant of changing dynamics throughout negotiations. By assisting the mediator to elucidate key underlying interests of the parties, their inter-relationships with other actors (particularly internal constituencies and external supporters) and options for conflict resolution, robust conflict analysis can help inform an overall strategy for a peace process, including the questions of process design and sequencing. If used properly, conflict analysis can increase the likelihood of a successful outcome to a peace process – and can minimise pitfalls.

Achieving durable, let alone truly integrative or "win-win", solutions in internal armed conflicts is enormously difficult. Generally, these are extremely unwieldy multi-party, multi-level processes where mediators, even those with an official mandate from an international body, often have little formal authority and must constantly fend off or channel other, competing mediation efforts (e.g. by interested states) into a single peace effort. The underlying issues are themselves usually tough to resolve and frequently have been exacerbated by violence employed during the conflict. This wartime violence usually creates additional issues for the peace process to resolve – in the areas of transitional justice (such as accountability for atrocities, compensation for losses and reconciliation) and

security (such as disarmament, demobilisation and reintegration of combatants, and security sector reform). In the face of such a challenging negotiating environment, an official mediator and his or her team therefore need to be, and to remain, as well-prepared as possible from an analytical standpoint.

This chapter attempts to provide a basic map of existing practices and suggests modest strategies for strengthening the role of conflict analysis in mediation efforts. The chapter begins with a brief review of key concepts in conflict management that situates the question of conflict analysis in relation to important aspects of how a mediator can seek to intervene within a conflict. The chapter then examines practical issues and challenges that mediators and their staff face in trying to integrate such an approach into their work. We next turn to concrete options and real-world examples of how such tools have been used by mediators, based on confidential interviews with more than half a dozen advisers and outside experts to recent peace processes, mostly in Africa.[1] There are few readily accessible or clearly documented examples where mediation teams systematically used such tools, but there are a number of instructive experiences that can be shared nonetheless.

1.2 Explanation of basic concepts

This chapter uses a number of key concepts related to the role of official mediators in formal peace processes. First, we understand official mediators to be a specific type of **third party,** which in general terms is an impartial party "outside" a conflict and seeking to open communication, broker dialogue, generate viable options or otherwise promote resolution between belligerents.

Third parties and/or their functions are typically thought of along a continuum between **facilitation** and **arbitration**. Facilitation relies on eliciting buy-in, information and co-operation with and between belligerents without the third party having much formal authority over them and little ability to impose settlements. In arbitration, by contrast, the third party is formally empowered through a more structured process to listen to parties and craft a solution, often issued as a ruling or decision that is understood to be binding.

Mediation is usually conceived of as midway between these poles, with this function involving a more formal, structured process than facilitation but lacking the full authority to impose solutions associated with arbitration. International politics introduces the question of **power** in the mediation process, whereby a mediator may be able to harness additional influence over parties

(or over others who can exert such influence over the parties). The mediation role played by South Africa – as an emerging regional power – in the Arusha peace process for Burundi provides a useful example here.[2]

Another important distinction is between types of mediator. An **official mediator** is generally an international organisation or a state with a formal mandate to engage in what is referred to as a **track-one process**. An unofficial mediator or other third party, like an NGO, academic body or private person, may seek to facilitate contacts, promote confidence, explore options or elements of a possible solution or otherwise encourage a settlement through efforts outside a formal process. (These alternative efforts are sometimes called **track-two processes** or even "track-three" or "track-four" or "multi-track" processes, depending on their purpose and who they involve.)

To be effective, official mediators often have to contend with competing mediation efforts – sometimes launched by individual states or other regional bodies – and channel them into a single process. One particularly glaring example of competing mediation efforts concerns Sudan, where a wide array of international actors was generally seen as unproductive in terms of finding durable solutions for the country's deep internal conflicts. At one point, a joint AU/UN mediator on Darfur (former Burkinabé minister Djibrill Bassolé), a joint special representative in charge of the peacekeeping mission UNAMID (former Nigerian Foreign Minister Ibrahim Gambari) and an AU High-Level Implementation Panel (headed by former South African President Thabo Mbeki) were all operating simultaneously in Sudan.

Advances in conflict management over the last generation or two have introduced useful concepts and even new terminology, particularly in the area of **interest-based negotiation** but also regarding social, cognitive and psychological barriers to conflict resolution. Key concepts in interest-based negotiation – including terms that have now entered the popular lexicon – are the differences between **interests** and **positions**. Interests are understood to be underlying needs and desires that a party is seeking to protect through conflict and that therefore require satisfactory treatment in any durable settlement. Positions constitute articulations of a party's ostensible desires that can mask or obscure those underlying interests (but that might not be expressed by a party due to internal reasons or key constituencies behind it). Another key concept is the idea that parties can use the mutual satisfaction of each other's interests through an **integrative agreement** (as opposed to a distributive one that only "divides the pie") to reach so-called **win–win solutions**.

Finally, the idea that parties have and can pursue different **alternatives to a negotiated agreement** (including the continuation of conflict) is a further key concept from the recent scholarship and practice of conflict management that is relevant for official mediators in peace processes. What is particularly important is a party's perception of its alternatives. If continued conflict is seen by a party's leadership as a "better" alternative than negotiation, a peace process is likely to fail to engage them in a genuine fashion.[3] In this connection, **spoilers** are parties that withhold their support for a negotiated settlement either as a tactical ploy (i.e. to alter the terms of the final deal in their favour) or sometimes out of ideological rejection of dialogue, compromise and/or the specific nature of the peace process. For example, Uganda's Lord's Resistance Army as a group has largely rejected dialogue for its own ideological reasons, though individual commanders have negotiated terms of surrender with Kampala.

Another important way to think about conflict resolution is in terms of distinct phases, during which parties might have very different needs and/or the third party might seek to play very different roles. Typically, these phases are divided between **pre-negotiation**, when the parties are not yet formally talking to each other, **negotiation** (e.g. formal talks and recesses between them) and **implementation** of an agreement (which might be divided into further stages). This sequence is somewhat idealised, however, as often a given peace process builds on previous efforts and/or implementation of an accord involves further negotiations or recourse to third-party processes, particularly with regard to difficult sticking points where clear, iron-clad agreement was not possible to achieve during the peace process itself.

The principal case studies discussed in this chapter – the 2003–2004 Somalia process in Kenya and the 2009–2011 Doha process for Darfur – were shaped by previous negotiations, including the partially implemented accords that resulted from earlier processes. Also, many peace processes defer resolution of sticking points to later mechanisms, like special commissions or panels, whether deliberately or implicitly. For example, Sudan's Comprehensive Peace Agreement (CPA) envisioned a whole series of joint commissions for the implementation of protocols ranging from sharing oil wealth to security and even final-status issues. Indeed, demarcation of Abyei's borders illustrates both of these approaches. When the Abyei Boundaries Commission (ABC), a mediation body mandated by the CPA, was unable to fulfil its task, the parties approached the Permanent Court of Arbitration in The Hague for a ruling, following the intercession of key outside countries.

From a third party's standpoint, **sequencing** of issues becomes a key consideration in the general approach and specific design of a mediation process. This concern is particularly germane for a third party expected to set an agenda for formal talks or otherwise determine an order of issues to be discussed (or to decide whether some issues should be discussed simultaneously, for example, in parallel working groups). Conventional wisdom and even some academic literature in the field of conflict management recommend that "easy" issues be discussed first, particularly if implementation of these sub-agreements is to be sequential and that "momentum" be created to build toward successful negotiations on the "hard" issues later. This approach is also sometimes couched in terms of **confidence-building measures** between parties. In the context of peace talks, this approach would look to incremental successes and progress in negotiations, for example, by seeking a cessation of hostilities and then a ceasefire before moving on to a broader political agreement.

However, the experience of certain peace processes provides arguments for an alternative viewpoint on agenda-setting, suggesting that success favours a more comprehensive approach to agenda-setting and the ordering or sequencing of issues. A ceasefire, for example, might be extremely difficult to implement successfully in the absence of an overarching political agreement and could therefore create enormous ill will between parties (the opposite of "confidence-building") if they see each other as untrustworthy as a result of failed implementation. This alternative approach – in which "nothing is agreed to until everything is agreed to"[4] – aims at sketching a tentative resolution of all outstanding issues before having the parties agree to any of them. (However, such a strategy still requires an internal sequencing of issues to be discussed and agreed to within the provisional accord.) This basic choice of strategy – incremental or comprehensive – will influence all a mediator's other choices.

Given the dynamic nature of power relations among parties and between them and other external actors, phases can often be fluid or change suddenly. These dynamics go to the issue of **ripeness,** that is, whether the overarching power dynamics in a conflict actually favour a negotiated settlement at a given moment or not. (Specifically, ripeness refers to whether parties perceive themselves to be embroiled in a mutually hurting stalemate with no prospect of a decisive battlefield outcome, making negotiation potentially more interesting.) In fact, so-called **moves away from the table** (i.e. away from the negotiating table) can radically transform the dynamics of a process. One of the most striking recent examples comes from Liberia. Under threat of an international war-crimes indictment, and under pressure from the US and several African countries, President Charles Taylor hurriedly abdicated power and departed

Liberia on 11 August 2003. Within a week, peace talks in Accra yielded an agreement between the Liberian government and rebel movements, the Liberians United for Reconciliation and Democracy (LURD) and the new Movement for Democracy in Liberia (MODEL), to create a transitional government, which was constituted in October 2003 and then handed over power to a democratically elected regime two years later.[5] Such a radical turn of events, including the prospect of a negotiated solution, would have been unimaginable in early 2003, with President Taylor still in power.

Within this context, **conflict analysis** is an important way for any third party – but particularly an official mediator and his or her team – to develop and maintain a comprehensive understanding of all aspects of a particular conflict. There is no "ideal" or exhaustive approach to conflict analysis. Rather, each analytical framework tends to emphasise certain approaches or dimensions more than others. For example, an "interest-based" approach to conflict analysis will focus on parties' underlying interests for pursuing conflict or seeking an agreement and generally not highlight power relations or usually not underscore what might be very real psychological or cognitive barriers to peace for a particular party (even if negotiating would otherwise appear to serve that party's interests). Using different conflict analysis "lenses" through an iterative process over time could therefore be a useful antidote to over-reliance on a single analytical approach.[6]

Conflict analysis could therefore include examination of a range of topics, such as the following.

- **Actors:** an analysis of the parties, their underlying interests and stated positions.
- **Power:** an indispensable form of analysis is to ascertain the nature, depth and solidity of each party's relative power (such as measured by popular support, battlefield strength or internal cohesion).
- **Issues:** key issues within the conflict, including the relative importance of issues for different parties and where potential agreements might exist (or where parties might be prepared to make trade-offs on different issues).
- **Dynamics and timing:** key drivers, events or actions over time, including those "away from the table" that might influence the parties (e.g. cutting off financing or political support from external patrons). What issues and factors of timing might drive a party's behaviour in negotiations (e.g. need/urgency to reach a settlement versus likelihood to become a spoiler for tactical or ideological reasons)? How might the dynamics of a peace process affect a party's relative power? Here, the question of "ripeness" and whether a peace process actually aligns with a potential window for an agreement are key.
- **Past efforts:** strengths and weaknesses of previous peace efforts, particularly of any that yielded formal texts or agreements (even if not implemented).

The best analysis will highlight the inter-relationship between different elements. For example, analysing parties' underlying interests and stated positions, studying how issues have been framed in a conflict (including in any previous agreements) and looking to comparative practice in other resettlements can also be invaluable means for a mediator to identify and propose to parties viable alternatives on sticking points. In short, a mediator can use this sort of information and analysis to assist the parties – and strategically involve outside actors who might have influence over the parties – to achieve a lasting solution. Given its highly sensitive nature, preparation and storage of such an analysis should be handled carefully, to avoid leaks to one or more parties, misuse by a state involved in the process, or inappropriate media dissemination.

1.3 Using conflict analysis and information management

This section summarises ways in which former staff of and expert advisers to official mediation efforts report having used conflict analysis tools. Also, given the changing composition of mediation teams and the dynamic nature of the parties themselves over time, this section reviews some essential components of sound information management, even though they themselves are more mundane functions than true "analysis". These components include: minute-/note-taking; document storage, retrieval and transcription; and reliable interpretation and translation. While these tools are not analytical as such, they are indispensable for collecting and maintaining accurate information on and from the parties.

In terms of conflict analysis, there is no "standard practice" or uniformity in how or when such tools have been used, and not all peace processes have relied on all of them simultaneously. A wide range of tools has been developed by academics, think-tanks, governments[7] and inter-governmental organisations.(Some of these are listed in the "Additional Resources" section at the end of this chapter). The AU itself has defined a standard operating proce-

dure for mediation support regarding the use of a "conflict analysis template" (Box 1). Rather, actual practice by real-world mediation initiatives reveals that different peace efforts – or sometimes even different team members during different periods in a process – have found variations of the methods below useful at times.

Good analysis requires a continuous process to avoid incomplete, incorrect or biased information, and a willingness to staff and support information-gathering and analytical functions within a mediation team. This requires a strong commitment to solid, iterative analysis, from the mediator and his or her staff. Indeed, a well-defined approach to conflict analysis will have little effect on informing a mediation effort if the mediator lacks an effective organisational and internal communication structure for his or her permanent team (and any short-term advisers or consultants brought into the process). In fact, the vast majority of practitioners interviewed for this chapter signalled the challenge of maintaining staff continuity and preserving institutional memory as a major, if not the largest, threat to the effective, ongoing use of analysis during a peace process.

Interviews with staff and expert advisers who have worked with different peace processes, mostly in Africa, indicate that some fundamental information management functions are often not systematically organised, creating a basic challenge for good analysis from the outset.

- **Minute-taking and archiving, storage and retrieval of documents**

Multiple impediments result from the very nature of peace processes and how the resulting data are handled. One long-time member of a mediation team indicated that the secretariat of that process lacked a clear system for note-taking during meetings, which were often held in private and/or without a clear designation of who should record key points and how they should be handled. Moreover, no system was in place for archiving, sharing and/or retrieving information. As much of this information was considered "confidential" or otherwise sensitive, further confusion was created about whether, how and where electronic files should be kept: whether on personal computer drives, in shared systems and/or with security protocols in place to restrict access to files according to pre-established criteria.

Tracking basic information from meetings with parties or other interested actors over time was thus extremely challenging, given difficulties in recollecting details of long-past meetings or informal encounters, managing turnover or internal reassignments of mediation-team staff and capturing the products of

short-term engagements by outside experts or consultants.[8] By contrast, the UN Good Offices Mission in Cyprus has assiduously sought to maintain a detailed record of key meetings, public hearings and similar engagements with parties and a wide range of stakeholders on the island.[9]

Box 1
The African Union template for conflict analysis[10]

The African Union's Conflict Management Division adopted in December 2011 a set of standard operating procedures (SOPs) for mediation support. Annexed to these SOPs is a conflict analysis template that the AU has adopted for ongoing and future mediation endeavours.

Reflecting existing best practice, the AU's conflict analysis template outlines four steps to help practitioners adequately understand their mediation context.

Step One: Evaluate the context of the conflict

This entails a contextual analysis for better understanding of the given conflict. Elements may include: environmental conditions, poverty, recent history of conflict, youth bulge or conflict-ridden region.

Step Two: Understand core grievances and social-institutional resilience

- Describe identity groups who believe others threaten their identity, security or livelihood.
- Articulate how societal patterns reinforce perceived deprivation, blame and inter-group cleavages and/or how they promote comity and peaceful resolution of inter-group disputes.
- Explain how institutional performance affects the resolution of conflict.

Step Three: Identify drivers of conflict and mitigating factors

- Identify key actors who can mobilise constituencies toward inflaming or mitigating violent conflict.
- Understand their motivations.
- Understand how best to affect their influence.

Step Four: Describe opportunities for increasing or decreasing conflict

This part of the analysis seeks to identify "windows of vulnerability" (key moments when events can unravel, e.g. around elections) as well as "windows of opportunity" (key moments that offer opportunities for mitigating conflict and promoting stability).

- **Interpretation and translation services and transcription of formal sessions**

Achieving a reliable level of quality in the language(s) being used before and during negotiations is a challenge that should not be underestimated, especially when a mediator and his or her team do not come from the immediate country or sub-region in question, and might have only an international language like Arabic, English or French in common with interlocutors.

Indeed, staff involved in the Doha process for Darfur noted significant shortcomings in the quality of Arabic interpretation in formal sessions and poor drafting of key written documents, such as the Frameworks signed with the Justice and Equality Movement (JEM) and the Liberty and Justice Movement (LJM), which rendered the final Doha Document for Peace in Darfur "nonsensical" at points.[11] For example, the JEM Framework, which was originally drafted in French with the assistance of Chadian President Idriss, was opaque in whether it formally established a cessation of hostilities and it failed to set a clear timetable for such a cessation. Some specific provisions on disarmament, demobilisation and reintegration and security sector reform were also not carried over into the final Doha document.[12]

Other advisers to peace processes identified the lack of transcription of formal sessions as a significant hindrance to understanding parties' views – and seeking to discern differences between stated positions and underlying interests – particularly when interpretation between multiple languages was involved.[13] This dynamic also tends to favour the better-educated, more cosmopolitan representatives of delegations, whether from states or armed groups, and might inadvertently sideline important voices in the process, particularly if the most significant or influential players within a party happen not to speak an international language well.

In fact, mediation teams often have a bias against hiring professional staff from the country in question, fearing that such analysts or advisers might be partial toward or beholden to one or another belligerent, or might compromise the confidentiality of sensitive information. While it is certainly challenging to identify objective national staff and safeguard against bias in their work, it is not impossible to do so. Also, as noted above, it is possible to institute an effective system for managing and protecting sensitive information.[14]

1.4 Approaches to conflict analysis

As noted above, conflict analysis is an iterative, ongoing process that can help inform a mediator's decision-making at every step of his or her engagement in a conflict. Rarely, however, does a mediator get involved in a true "pre-negotiation" phase, before any mediation efforts begin. Many conflicts, particularly internal ones, have been long-running and generally, earlier peace efforts have to be studied and understood well by any new mediator becoming involved in trying to resolve the dispute. While prior initiatives should not be a straitjacket for subsequent ones, they do powerfully shape parties' expectations around many dimensions of a new process. A mediator is therefore well served by understanding this influential legacy, especially if he or she is seeking a significant course change. As noted below in the case study on Somalia (see Box 3), each new mediation initiative – or new mediator engaged in an ongoing effort – usually grapples with the question of process design, for which solid conflict analysis is essential (but by no means a guarantee of success).

This section aims to summarise ways in which a mediator can become more knowledgeable and gain insights on key aspects of a conflict such as: context, actors, process design, issues for negotiation, legacy of past agreements, comparative practice and potential implementation roadblocks. This sequence is not meant to be followed mechanistically. Studying earlier peace efforts might be inextricably linked to understanding the context, for example. Rather, the above-mentioned issues are highly inter-related, and effective analysis will build up a comprehensive picture of the inter-relationships over time. An effort to re-launch negotiations would need to understand the following interplay: an actor's internal dynamics > its approach to earlier negotiations > shaping the agenda of issues that can and cannot be discussed in new negotiations (and how).

Similarly, thinking ahead about potential implementation challenges might shape what and how issues are discussed during negotiations, especially if special resolution mechanisms are envisioned for handling tough issues during implementation (as opposed to in the negotiations themselves). For example, the highly uneven track record for resolving major sticking points of Sudan's Comprehensive Peace Agreement (status of Abyei, north-south border, and so on) during implementation instead of at the negotiating table suggests that prior analysis of implementation roadblocks might better inform other peace processes that seek to copy this approach.

Finally, the inter-relationships between these elements might also change over time and require updating and re-examination. "Moves" or other events "away

from the table" often have enormous impact on negotiations: power dynamics shift, parties' perceptions change of the relative attractiveness of war versus peace, and outside actors exert changing influence.

- **Context: what game are we in?**

A mediator's first challenge is to understand the overall context in which the conflict is taking place. This process has often started before the mediator is formally appointed or becomes actively involved. Invariably, the mediator's own understanding of the conflict will come initially from media reports, professional activities and personal contacts. This study is often self-styled and not systematic, but can lay a foundation for more in-depth analysis. Here, the experience of one Secretary-General's Special Representative is instructive; Ahmedou Ould Abdallah was assigned to Burundi in the wake of the 1993 crisis. He recounts, "I was told by the under-secretary-general for political affairs to take up my new post within forty-eight hours. When I asked for a briefing… I was given instead only a thin file with the latest news dispatches on Burundi."[15] In the end, he was able to arrange for his own briefings through his own connections.

Once a mediator is appointed, a mediation team can assist in this process through measures to help structure briefings, including from outside experts who might bring deep understanding and/or a fresh perspective (see below in the Conclusion). Unfortunately, inter-governmental organisations have become only marginally more adept at this process than in Ould Abdallah's time, and it will therefore be incumbent on a mediation team to organise and support the mediator in this regard.

Indeed, a successful mediation team will also help a mediator not only understand the context but also try to bring other key "external" or third-party actors around a common understanding of that context. Rarely are mediators operating alone; interested countries, whether regional players or world powers, will often have senior diplomats or even Special Envoys engaged in supporting a peace process. Different inter-governmental organisations will often have senior personnel or even Special Representatives involved and, in the case of Darfur, the African Union simultaneously supported multiple initiatives (UNAMID, Joint Mediation Support and the High-Level Panel) that were not necessarily all pulling in the same direction. Convening a broad-based, but focused group of senior diplomats and envoys to assist a mediator in understanding the context can serve not only the mediator's own analytical purposes and develop a shared analytical framework, but also overcome communications barriers and generate a more solid common strategy on the conflict.[16] This can be done regularly, to strengthen external support for a mediator's recommended course of action.

- **Actors: identifying who's who**

An indispensable function of conflict analysis in a peace process is to assist a mediator in understanding the actors involved. This is particularly important if a mediator is newly appointed, and also for new advisers or short-term consultants. For most of the African peace processes reviewed for the present chapter, this function appears not to have been carried out systematically or comprehensively in each case. While new envoys are often briefed orally by the international organisation that has appointed them, it appears that detailed profiles of key leaders or other significant constituencies within the parties to a conflict are not compiled or updated in written form, such as by desk officers in the UN Department of Political Affairs.[17]

Nonetheless, given the importance of key individuals, their positions and power in mediation processes, individual peace processes have sought to compile such information. In some cases experts on a given conflict were brought together to develop, in a discreet setting, a profile of the most influential individuals, their interests and ability to influence the conflict (positively or negatively). Such analysis can bring together external experts to the conflict, particularly in highly sensitive or polarised settings or bring together trusted actors in the country in question, which can also help to structure some early consultations for the mediator. In other cases, the mediation team has used visual depictions of the inter-relationships between parties. For example, in the run-up to the Doha process on Darfur, staff assembled descriptions of key players within the parties and developed draft diagrams showing interconnections among them. To cross-check information and verify these inter-relationships, staff would circulate draft versions within the secretariat and even discreetly share them with key, carefully selected interlocutors among the parties.[18] This tactic was used not just to enrich and refine the underlying conflict analysis, but also to try to develop trust with parties.[19]

Related to questions of process design (discussed in the following subsection), the mediation team for the Doha process used three relatively straightforward criteria for recommending to the mediator which of the armed groups to invite: political weight, military strength and control of territory. Initiated in 2008, these analytical reports on the armed groups were updated periodically and were informed by field research commissioned by the mediation team. By 2009, they also attempted to analyse a group's ability to generate horizontal linkages (e.g. with other groups) as to connect vertically, that is with both political strata and grassroots constituencies. The aim was to identify those armed groups that could create a political-organisational centre of gravity and not just participate in a peace process through self-interest.[20]

In addition to this basic background research and mapping of key actors, a peace process must also understand whether the mediator is talking to the right parties about the right issues – and often even whether the right person (or people) within a party are engaged as interlocutors. The ostensible leader of a group or top official in a government delegation may have a formal role that is more representational while the real influence within a party is wielded by someone in a more junior-sounding position or even without an official title.[21] Beyond the largely internal, desk-based process described above, the Joint Mediation Support Team (JMST) for African Union/United Nations effort in Darfur also endeavoured to "ground-truth" popular support, perceptions of battlefield strength of armed groups and internal rifts within parties by relying on fieldwork by consultants.[22] Surprisingly, however, UNAMID (the African Union/United Nations Hybrid operation in Darfur) proved not to be a systematic source of reporting into the Doha process, despite the wide deployment of human rights, civil affairs and political affairs officers in the field. This is a challenge of field operations, where differing mandates, competing agendas and the lack of robust communication make cooperation difficult.[23]

- **Process design and sequencing**

Despite often considerable limitations, a mediator is expected to make the most of his or her role and bring the parties together in an effective process. Fundamental to this challenge is the question of process design, over which the mediator may have relatively narrow influence, due to the lingering effects of previous negotiations, the current preferences of the parties and any external patrons and other factors. Nonetheless, the mediator faces crucial choices about the overall design of a process and the sequencing of steps or phases therein. One often under-estimated consideration is the difference between an "incremental" and a more comprehensive approach (both described briefly above in Section 2).

Regardless of the approach adopted, questions of process design remain in constant interplay with other elements of conflict analysis, including continuous scanning for key actors. Indeed, a rigorous inventory of the actors, including those outside a formal process, is needed periodically to avoid unconscious bias creeping into a mediation team's role. This can arise in different circumstances, but as the following example from the Doha process reveals (Box 2), it becomes more difficult to manage once a process has started, key milestones have been reached, and new or previously absent parties seek to join a process. Set on a certain course, a process can develop "path dependency", making it more difficult to alter given new circumstances. Mediation efforts can benefit from careful analysis of key issues to be negotiated, sequencing of talks and provisional agreements with key parties, and internal reflection on design options. (Unfortunately, the Doha process also provides a cautionary tale about the limitations of conflict analysis as technical approach when the overriding political imperative of a process's sponsors is to continue with it, despite its shortcomings.)

- **Identifying and analysing the issues – and generating options for resolution**

A key mediation function is to help parties reframe issues on which they have come to a deadlock. Reframing helps to generate new options for resolution and/or identify elements suitable for trade-offs. Due to cognitive biases or internal political considerations, parties themselves might be unable to identify these opportunities for reaching common ground, or face serious criticism from within their own party for having suggested alternatives that deviate from established negotiating positions. A mediator can therefore offer creative and/or face-saving solutions that might elude the parties themselves. In the case of Cyprus, the UN Good Offices Mission used its own detailed analysis of issues, including the parties' stated positions versus underlying interests (e.g. how the parties themselves see them, what other key stakeholders might say about them, etc.) to help craft "bridging options" to help reach agreement on provisions in a draft deal that has emerged from what is in other respects very much a Cypriot-owned process.[24]

In other instances, mediation efforts have found it useful to commission outside experts to provide one-time (or sometimes recurrent) background analyses on key issues. For example, during the peace process that led to the Comprehensive Peace Agreement for Sudan, mediated by the Intergovernmental Authority on Development (IGAD), the issue of the so-called Transition Areas (later known as the Three Areas) of Abyei, Southern Kordofan (Nuba Mountains) and southern Blue Nile State was inserted into the Naivasha talks after initial discussions hosted in the Nairobi suburb of Karen.[25] These talks were held under the auspices of the Kenyan government and mediated by General Lazarus Sumbeiywo (who was also the IGAD mediator for the formal Naivasha process). As part of the preparations for these discussions, background analyses to assist the mediation team were commissioned from three well-regarded specialists on the Three Areas, covering the history of conflict in each zone and analysing key issues and ways to resolve them in any eventual agreement. These issues included population displacement, personal security, religion and strategic natural resources. The analysis noted the enormous impact that drawing the north-south border would have on these regions, the need for special administrative arrangements for them during the CPA's Interim Period and the significant uncertainty generated by local demands for self-determination and self-government.[26]

Box 2

Conflict analysis in the face of a flawed process: the case of JEM and Doha

Could deeper conflict analysis, particularly concerning participation and timing, have benefitted the Doha process? Qatar launched the process in 2009 largely as a prestige project aimed at bolstering its regional role, and other states felt compelled to support it for lack of viable alternatives and hoping that it might produce some good, despite its limitations. Arguably, however, it was ill conceived as a peace process. The mediation team sought to use the Doha process to restructure the fragmented nature of the armed groups, but to limited effect.[27] While certain provisions of the Doha Document for Peace in Darfur (DDPD) are being implemented, it cannot be characterised as a comprehensive deal with real prospects of success.

Could better conflict analysis have helped the UN/AU mediator and the Qatari sponsors of the Doha process arrive at a more successful outcome than the Darfur Peace Agreement (DPA) of 2006? Due to time constraints and external political pressures, mediators sometimes try to pursue a "departing-train" strategy for a negotiation. This happened in Abuja in 2006 – with the imposition of a formal deadline for parties to sign the DPA by May of that year.[28] However, this strategy failed to gain the endorsement of the two then principal rebel groupings, including the Justice and Equality Movement (JEM), which decided not to sign the DPA. Pursuing a political project of regime change, far broader than just a set of Darfuri grievances, JEM was always an awkward fit for a regionally defined peace process. Despite other weaknesses however, JEM had significant battlefield strength.

While the Doha talks were not identified as a peace process, one of their aims was to create a viable counterpart to the Sudanese government by amalgamating disparate rebel groups into a more cohesive whole. The Doha process, which saw the signature of the JEM Framework in February 2010 as a major milestone, nonetheless suffered from the subsequent disengagement of JEM negotiators. And yet, after more than two years, Qatar as host of the Doha process began to push for a mid-2011 final signing ceremony. Advisers to the mediator were loath to recommend a departing-train strategy once again, partly since key groups like JEM were not participating fully. JEM's intermittent participation undermined the overall goal of rebel unification, and presented the mediation team with a dilemma once JEM decided to become active again, late in the process.

At this point, the mediation team struggled to reincorporate JEM's participation. International sponsors of the process were keen to "reward" other groups for their participation in dialogue and not unduly "favour" JEM after its disengagement. International sponsors sought to support the Liberty and Justice Movement (LJM), a result of earlier Libyan and US efforts to unify disparate non-JEM factions and which had little popular support or battlefield strength.[29] LJM, by contrast to JEM, was prepared to accept the draft DPDD. When JEM representatives reappeared at Doha to advance their views and seek inclusion of key terms in the draft DDPD, the mediation team sat with them and outside experts to discuss extensive JEM comments on at least four of the agreement's seven chapters.

In the end, none of this commentary was reflected in the final version,[30] and JEM (as well as rebel groups other than LJM) refused to sign the DDPD.[31] In short, outsiders had once again failed to get JEM on board. The mediation team was well aware of the limitations of the overall process and particularly attuned to the role of JEM.[32] In the face of strong political pressures however, the mediator and the Qatari sponsors were keen to get a signed document, whatever its flaws. It is debatable whether any amount of incisive conflict analysis by a mediation team would have changed this outcome very much, if at all.

In one instance, following the breakdown of talks in Machakos between the Sudanese government and the SPLM on the Transition Areas, a particularly insightful background paper written by another outside expert helped to open space for renewed dialogue. Prepared by the expert on the basis of "information collected during informal discussions with several leaders on both sides", the paper indicated that "a number of options could be explored by the mediators with regard to the eventual status of the contested areas, to reach a workable solution acceptable to the Parties."[33] The document was shared with the IGAD secretariat as well as with the parties, and the expert then discussed it at length with the SPLM and more briefly with the government representatives. While the link between this paper and the final text of the CPA protocols

on Blue Nile and South Kordofan is not direct, the paper was nonetheless able to re-engage the parties (especially the SPLM) in a dialogue when the process appeared to have broken down.[34]

Other processes have had some success in tapping into creative thinking on options for solving a conflict generated by "track-two" talks (between influential opinion-leaders for parties, or key interest groups in a conflict, but not formal representatives in official talks). This was the case in Darfur, when Darfuri political elites and intellectuals from various tribes were brought together in a process hosted by the Max-Planck-Institut in Heidelberg, Germany, starting in 2008. The so-called Heidelberg Darfur Dialogue produced a final, 75-page "Outcome Document Containing Draft Proposals for Consideration in a Future Darfur Peace Agreement" in May 2010, which many objective observers regard as a largely workable set of "bridging options" for many of the contentious issues from the war.[35]

Some peace processes have tried to use joint trainings for creating greater interaction between parties at the inter-personal level and for injecting "outside" thinking into discussions. Such trainings can also be conduits for comparative practice into a given process (see below, for more on comparative practice). In both the Somalia and Darfur cases highlighted elsewhere in this chapter, international experts were commissioned to participate in joint discussions or otherwise provide joint trainings to the parties on technical issues. In the case of the Doha process, trainings were conducted on issues ranging from ceasefire provisions to handling internally displaced persons (IDPs), but they exacted a considerable effort in terms of contracting, travel and logistics and suffered from a variety of shortcomings, including uneven participation by representatives of the parties. (These sessions were also seen as a way to "level the playing field" by giving delegates from the armed groups greater access to technical information that the Sudanese government's delegation already possessed from years of negotiations over the country's various internal conflicts.) While some of these trainings might have produced positive effects, it is questionable whether, in general, they served to generate new insights or approaches to the underlying issues.[36]

- **Role of previous agreements**

Peace processes are rarely written on a blank slate. Rather, the parties (or an earlier constellation of parties, sometimes represented by different people) have usually entered into agreements in the past, frequently with the help of outside mediation. These prior accords, even or perhaps especially when they were not successfully implemented, deeply influence the parties' perceptions of their maximalist and bottom-line positions and they greatly shape the so-called "zone of possible agreement" for any new deal. Also, if an international body or key regional state had engaged as mediators or supporters of an earlier peace effort, they themselves will often be loath to abandon or radically modify core elements. This creates an additional factor to be managed in the mediation process – the legacy of prior agreements.

In the case of Darfur, the Doha Process in 2009–11 had to contend with the lingering role of the Darfur Peace Agreement (DPA), negotiated in Abuja, Nigeria, in 2006. The DPA had been signed by the Sudanese government and only one rebel group at that time, and only partially implemented, due to a variety of enormous challenges. Nonetheless, the structure of the DPA and many of the issues it sought to address exerted a constant influence over the direction and design of the Doha process, both positively and negatively.[37] In addition, the Doha initiative itself had to expend considerable effort – and even bring in a UN legal expert on a short-term basis – to attempt to reconcile DPA provisions with new agreements between the parties in February–March 2010 and with other documents prepared in the run-up to the Doha Document for Peace in Darfur (ultimately signed in mid-2011).[38]

In February 2010, the Sudanese government and the Justice and Equality Movement (JEM) agreed to a Framework and Ceasefire Agreement (JEM Framework), which had initially been negotiated with the assistance of Chadian President Idriss Deby. Then, some weeks later, in March 2010, the government and a plethora of rebel groups recently unified into the Liberation and Justice Movement (LJM) also signed a Framework Agreement to Resolve the Conflict in Darfur (LJM Framework) and a ceasefire agreement. Peculiarities of the drafting processes, including the use of different languages for different parts of the negotiations, resulted in gaps in the agreements. Such problems could possibly have been avoided (or better handled) with a more in-depth analysis of previous Darfur agreements, before the start of the Doha process.

- **Comparative practice**

Mediation teams can also benefit from a deeper understanding of how similar problems in other peace processes have been resolved. Except when an adviser to one process has worked on other processes, there are currently few systems for sharing comparative practice across a given region or around the world. Some peace processes have commissioned studies or analytical pieces by outside consultants such as noted academics or regional specialists. In the

case of the UN's involvement in trying to resolve internal boundary disputes within Iraq, expert advice based on worldwide comparative practice informed a key report submitted to the parties by the Secretary-General's Special Representative.[39] In addition, a significant non-governmental effort to promote learning from comparative practice in peace processes has been launched by the Public International Law and Policy Group. The Group prepared a "Darfur Peace Agreement Drafting Guide", a comprehensive document analysing the impediments to a peaceful resolution of the Darfur conflict.[40]

- **Potential implementation roadblocks**

One major weakness in peace processes has been the lack of attention to challenges of implementation, which, again, can benefit from deeper analysis long before a deal is signed and implementation unfolds. As highlighted above, peace processes have often looked to implementation mechanisms – a cross-party commission on issue X or a high-level panel on issue Y – to resolve outstanding sticking points that negotiators were not able to agree to during talks. This tendency is more marked in an "incremental" approach under which a mediator seeks to use smaller agreements on "easier" issues to build up to a larger accord on tougher issues as well, but more "comprehensive" approaches also sometimes leave key sticking points to be resolved during implementation.

Due to political pressures by regional powers and/or countries funding or hosting a peace process, there may be little, ultimately, that a mediation team can do to change the course of a peace process significantly once it enters a final phase and an accord nears completion. Nonetheless, in-depth analysis can help identify potential pitfalls and areas for special focus during implementation and increase the likelihood of success. At times, a mediation team, parties and/or key post-conflict donors will devise a "roadmap" or other guiding documents, but rarely if ever are they truly candid about the real vulnerabilities for implementation. Often, analysis by outside specialists or even a bespoke gathering of such analysts during the negotiation process[41] can look critically at potential roadblocks or dangers in implementation and put forward possible alternatives that might be easier to implement.

Box 3

Somalia: conflict analysis in support of the Eldoret–Mbagathi process

Since 1991, Somalia has been "the site of some of the world's most intensive mediation efforts",[42] including six national peace conferences.[43] Aside from formal conferences, other efforts include the 2008–09 Djibouti talks that led to agreements between factions represented in the Transitional Federal Government (TFG) and members of the Alliance for the Re-liberation of Somalia.[44] And yet, more than three years later, most of Somalia still lacks an effective state and faces deep insecurity.

Given this highly fractious environment, it would be reasonable to expect conflict analysis to figure prominently in outside mediation efforts. So, how did the mediation team under the regional Inter-Governmental Authority on Development (IGAD) use conflict analysis during the 2003–2004 process in the Kenyan towns of Eldoret and Mbagathi? IGAD's primary goal was to develop a successor to the failed Transitional National Government (TNG), fruit of the 2000 Arta process. In this respect, the Kenyan process succeeded: in late 2004, peace-conference participants approved the Charter establishing the TFG and other institutions to replace the TNG. Ultimately, however, the TFG's creation relied heavily on the support of TNG opponents, including warlords backed by Ethiopia. This deepened a rift with former TNG supporters, setting the stage for the ascendancy of the Islamic Courts Union in mid-2006, the Ethiopian invasion of December 2006 and renewed fighting in 2007–2008.

It seems that the IGAD team used conflict analysis only somewhat systematically.[45] Analysis was often delivered verbally to the first mediator, former Kenyan cabinet minister Elijah Mwangale.[46] Much of this input could be considered political analysis and advice rather than objective "conflict analysis". Nonetheless, four types of support stand out.

1. The mediation team devised a matrix for identifying potential peace-process participants along three primary dimensions – political orientation, regional representation and clan balance. They also ensured that important constituencies like women, business interests, traditional authorities and civil society were represented. Used to prepare the formal invitation list, this tool was

to offset a key weakness of earlier processes: representation.[47] As the conference approached, however, the mediator himself came under pressure to open up participation to more delegates from certain factions, and a brisk trade in resold and counterfeit conference badges also emerged. These lapses seriously undermined the balance and quality of representation and ultimately contributed to a "winner-take-all" outcome.

2. Documents were prepared laying out the overall design of the process in three key phases: negotiation of a ceasefire agreement, simultaneous committee-based discussions on substantive issues, and approval of a charter establishing new governing structures.

3. Reporting and analysis (mostly verbal) on committee proceedings was provided to the mediator, particularly on how committee discussions were progressing and how committee dynamics could interact with those in the conference's high-level steering committee.

4. International experts, including thematic and regional specialists, were hired as consultants to support the process.[48] They assisted with independent analysis and contributed to committee reports.

It was envisioned that a roadmap for overall implementation would be developed, but once the outlines of the TFC emerged, the Charter itself served as the core document going forward.

In brief, analytical tools appear to have been most relevant at the outset of the Eldoret-Mbagathi process. After the negotiations' dynamics took hold, staff focused on day-to-day reporting and advice-giving. However, given Ethiopia's strong role (supported by Kenya) in pushing for a certain outcome, the potential impact of dispassionate conflict analysis, even if updated throughout the process, is highly debatable. The result, in other words, might well have been the same.

1.5 Conclusion

Mediation teams do not currently practice conflict analysis consistently, due to a variety of constraints and impediments. These include time pressures, concerns about recording sensitive information in written form that can be inadvertently shared with (or deliberately leaked to) unauthorised recipients, shortages of long-term staff to support a mediator, and the lack of organisational structures and cultures that could favour more systematic use of analytical tools. Mediators, who themselves are often extremely skilled politicians or diplomats, tend to rely on methods that have worked well for them before. They might not fully appreciate the value of concepts and methodologies from the field of conflict analysis and management. In addition, the mediator's agenda may be driven mainly by political considerations, such as an influential country or countries seeking to push a process in a certain direction, or donor governments imposing time or financial limitations.

A first step in developing and integrating greater analytical rigour into a mediation process might, therefore, be to organise an informal workshop or review session on such methods and tools with the mediator, particularly with a new mediator or if the mediation has reached a turning point. Such a moment can be used for defining an approach for using analytical tools and setting up the necessary internal systems for supporting them. Here, the experience of the two recent peace processes is instructive. A newly appointed UN envoy for the Western Sahara has requested in-depth briefings from a range of country experts and specialists in subjects related to the underlying conflict.[49] Such events could also provide an opportunity to help a mediator think through what informational and analytical needs she or he might have, not just at the start of her or his involvement, but also over time.

In the case of the Naivasha talks that led to Sudan's Comprehensive Peace Agreement, the negotiations were greatly enriched by a multitude of different resources, including general training for the parties on mediation and political settlements as well as in-depth studies and the use of experts for each of the different focus areas of the talks.[50] While such analytical inputs might not guarantee the success of a mediation process, they certainly give peace a better chance.

Chapter 2:

Process options and strategies in conflict settlement negotiations

Stefan Wolff

2.1 Introduction

Achieving and/or preserving peace between opposing parties often requires intense, facilitated and mediated negotiations. How such negotiations are structured shapes not only their course but also their outcome and the sustainability, if any, of such outcomes. In other words, parties need to have confidence in the process of negotiations to deliver an acceptable outcome that will enable them to engage with each other in ways that allow them to avoid violence in pursuing their interests. Hence, mediators need to invest considerable effort in thinking through the structure of "their" peace process. They need to bear in mind parties' interests, concerns, demands and capacity, their representativeness and internal structure, the interests of society at large and the broader region in which a conflict is embedded, as well as the resources available for seeing a peace process through to the end – beyond negotiating an agreement to its full implementation and operation.

Mediators need to start from a thorough analysis of the conflict, to bring the right negotiators to the table and assist them in engaging with each other constructively to find a peaceful settlement. Therefore, mediators need to encourage the parties to use an interest-based, problem-solving approach rather than a positional, adversarial bargaining approach in their conflict settlement negotiations.

In line with a problem-solving approach, mediators should see their role as helping each party to improve their understanding of their own core interests and concerns, as well as to appreciate those of the other party. It is essential that the mediator assists parties in broadening their understanding of the full

range of different options available to them to address these concerns. This can enable the parties to move away from zero-sum bargaining to discuss, refine and eventually accept new ideas that can be built gradually into a mutually acceptable agreement by resolving individual issues, rather than by trying to impose their own favoured model of conflict settlement on the other party.

Mediated negotiations between conflict parties themselves are but one element in the toolkit of peace processes. They are important, even preferable, but cannot guarantee desirable outcomes. Mediators in particular need to bear in mind that their ability to "deliver" anticipated outcomes depends on their ability to shape, manage and protect the mediation process. This procedural focus is the key task of mediators, but it may also be helpful if mediators are able to grasp the substance of negotiations and to draft proposals for the parties to discuss and agree.

- **Issues and options**

This chapter is primarily for senior diplomats, mediators and facilitators involved in conflict prevention and settlement, as well as negotiators from the parties in conflict. It elaborates on nine dimensions of conflict settlement negotiations, from negotiation formats to ratification and implementation. It details the different options available for designing a process and ensuring that it can lead to an agreed settlement for sustainable peace, illustrating these with specific examples from a range of peace processes.

There is a significant degree of interdependence between these issues. Decisions on participation for example, will shape the items on the agenda of negotiations because parties will negotiate what they care about. If issues are negotiated sequentially, parties may be encouraged by successes at some points in the negotiations, while being frustrated by stalled or deadlocked negotiations at others. Negotiating several issues in parallel minimises the risk of complete deadlock, but increases the complexity of negotiations. A fixed timeline with a deadline by which negotiations need to be concluded increases the pressure on parties to engage constructively and effectively but risks sub-optimal outcomes of negotiation processes, whereas open-ended negotiations create opportunities for parties to negotiate thoroughly and achieve a sustainable agreement, but may also enable them to drag out negotiations until they eventually falter completely.

One significant choice of approach to mediation is of whether to use either a formal pre-negotiation agreement or a set of principles (which can be proposed by the mediator), to which parties subscribe and which the mediator is then authorised to uphold. While different in nature and scope, both formal pre-negotiation agreements and informal mediator principles lay down important rules governing some of the dimensions for the negotiation process and incorporate a degree of verification for at least some of these rules. Moreover, formal agreements generally incorporate principles to which the parties commit, i.e., which they accept as binding rules for the process they are about to enter into.

The 1994 Framework Agreement for the Resumption of the Negotiating Process between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca is an example of a formal pre-negotiation agreement. It covers agenda setting, mediator mandate, civil society involvement, the role of the Group of Friends, disclosure procedures, timeframe and verification mechanisms. By contrast, the parties in the Northern Ireland negotiations committed to the 1996 Principles of Democracy and Non-violence (the so-called Mitchell Principles), including "democratic and exclusively peaceful means of resolving political issues; the total [and independently verified] disarmament of all paramilitary organisations…; the renunciation to use force, or threaten to use force, to influence the course or the outcome of all-party negotiations; an agreement to abide by the terms of any agreement reached in all-party negotiations and to resort to democratic and exclusively peaceful methods in trying to alter any aspect of that outcome with which they may disagree."

The more detailed assessment that follows in the rest of this chapter offers an overview of the different options that can be used to structure negotiation processes. This broadly comparative perspective should be regarded as a menu of options from which to choose. It is not intended to be prescriptive as no single option can be either sufficient to enable successful negotiations or to deliver a sustainable negotiated agreement in all cases.

2.2 Defining the purpose of negotiations

Agreeing on a purpose for negotiations is the first, and thus foundational, important step for parties, and indicates a shared understanding of what a negotiation process intends to achieve. It also demonstrates the parties' joint commitment to achieving this purpose. For example, the Liberia peace agreement signed in Accra in June 2003 offers a comprehensive definition of the purpose of settlement negotiations, detailing ten specific outcomes envisaged from the negotiations (Box 1). It also gives details about participation, agenda and timeline, and touches on the role of ECOWAS as mediator.

Box 1
Purpose of negotiations, Liberia, 2003

Annex 1 to the 2003 Comprehensive Peace Agreement on Ceasefire and Cessation of Hostilities between the Government of the Republic of Liberia (GOL) and Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties.

Political reconciliation
The signing of this agreement shall be followed immediately by the engagement of the GOL, LURD and MODEL with all other Liberian political parties and stakeholders in dialogue, to seek, within a period of thirty days, a comprehensive peace agreement. The peace agreement shall amongst other issues, cover the following:

- deployment of an international stabilisation force
- commencement of disarmament, demobilisation and reintegration programme restructuring of the security forces (security sector reform)
- human rights issues/reconciliation
- humanitarian issues
- socio-economic reforms
- reconstruction/rehabilitation
- creation of a democratic space
- formation of a transitional government, which shall not include the current president in accordance with his June 4th 2003 declaration made at the inauguration of the "ECOWAS peace talks"
- elections.

A different way of defining the purpose of negotiations is to delimit the outcome of negotiations by defining the principles that the sides have to respect in their negotiations, for example the territorial integrity of an existing state (Box 2).

Defining the purpose of negotiations and/or principles that have to be respected by the parties is an important tool for the mediator to enable parties to commit to meaningful negotiations. It can help them overcome a lack of trust and ensure that particular "red lines" are not crossed during negotiations. It is also useful for the mediator who can then keep negotiations focused with reference to their purpose, and structure them in a way that promotes constructive outcomes.

Box 2
Principles of negotiations, DR Congo, 1992 and 2001

Chapter 5 of the Modalities for the Implementation of the Ceasefire Agreement in the Democratic Republic of Congo (Annex A of the 1992 Lusaka Ceasefire Agreement) specifically states that "[o]n the coming into force of the Ceasefire Agreement in the DRC, the Parties agree to do their utmost to facilitate the inter-Congolese political negotiations which should lead to a new political dispensation in the Democratic Republic of Congo."

This commitment was reaffirmed in the Declaration of Fundamental Principles Accepted by the Congolese Signatories to the Lusaka Agreement in 2001, specifying further principles to be respected, including:

- the sovereignty and territorial integrity of the Democratic Republic of the Congo
- national reconciliation and a new political order as the basis for rebuilding a Democratic Republic of the Congo where the people are united, reconciled and free of tribalism, regionalism, ethnicism and all forms of hatred
- the promotion of an environment for lasting peace, security and stability in the Democratic Republic of the Congo and the subregion.

2.3 Negotiation formats

How should negotiations be conducted? The answer to this is highly context-dependent and follows directly from establishing the purpose of a negotiation. Choosing a format for negotiations is one of the fundamental issues that parties need to agree on – or agree to, if particular formats are suggested by third-party actors. Format options include:

- strictly secretive direct negotiations among a small number of high-level representatives of the conflict parties
- proximity talks
- shuttle diplomacy
- broad-based constitutional conventions and national dialogues involving a wide range of actors, including from civil society.

Formats may change over time and may combine different types of engagement. For example, negotiations among leaders may be combined with:

- (periodic) input from a wider range of actors that will usually be non-binding at the negotiation stage
- some form of approval of negotiated outcomes by (newly elected) parliaments or constitutive assemblies, or in popular referenda.

Format changes can also be useful if negotiations become deadlocked. For example, it may be possible to resolve a particular issue in a plenary session, perhaps because it is too sensitive or emotive. Moving this issue to a working group to consider in a purely technical, problem-solving sense, or having it discussed behind closed doors between leaders only may help to find a solution that can be agreed later in a plenary session.

More broadly, plenary sessions tend to be overly confrontational, with parties simply sticking to their own positions and well-rehearsed arguments rather than making substantive progress towards a solution. In contrast, one of the key advantages of proximity or shuttle diplomacy is that these formats do not involve parties "performing" to wider audiences. By keeping parties apart, at least sometimes, mediators can more easily explore each party's hopes and concerns, and can propose innovative options for resolving them, gradually building solutions to which the parties can agree. In such a case, plenary sessions often serve to endorse an agreement that has already been reached by the parties elsewhere (Box 3).

Frequently, questions of format are left to subsequent agreements of the parties at the outset of their negotiations. However, it is important for mediators to be aware of these different options and the conditions under which they are feasible. Negotiations under significant time pressure, either because of an agreed or imposed deadline, or because of a deteriorating security situation, often require negotiations of different issues in parallel. The success of such a format, however, is contingent on parties' capacity to mobilise enough sufficiently competent and duly authorised negotiators to engage with each other. It also requires a relatively large mediation team with sufficient resources and support to facilitate and coordinate parallel negotiations.

Finally, the sequence in which issues are negotiated is important. Decisions on the order of topics should be informed by mediators' expertise on how to structure negotiations so that parties experience a number of successes before approaching potentially difficult subjects. Early successes are often important because they can serve two purposes:

- Build a reservoir of accomplishments that parties may be unwilling to risk by breaking off negotiations over a later difficult issue
- If achieved in proximity talks or through shuttle diplomacy, early successes may enable parties to gain sufficient confidence for face-to-face talks which, in turn, can give settlement negotiations additional impetus and momentum and facilitate further constructive engagement.

Box 3
Multiple formats, Guatemala, 1991 and 1994

In the "Agreement on the procedure for the search for peace by political means", between the Government of Guatemala and the Unidad Revolucionara Nacional Guatemalteca (URNG), signed in Mexico City in April 1991, both parties agreed "to hold negotiations through direct meetings" while also allowing for the possibility of "[i]ndirect meetings… between the parties through the Conciliator and in the presence of the Observer". This format is reconfirmed in principle in the January 1994 Framework Agreement for the Resumption of the Negotiations Process between the Government of Guatemala and the Revolucionara Nacional Guatemalteca, but this latter agreement also establishes an assembly of non-governmental organisations to discuss, in parallel to the negotiations between the Government of Guatemala and the URNG substantive issues on the agenda "with a view to formulating positions on which there is consensus" among the participants in the assembly and inform the negotiations between the parties by transmitting to them "the recommendations and guidelines [which] shall not be binding."

At the same time, agreements reached in the negotiations were to be discussed in the assembly with a view to "endorse such agreements so as to give them the force of national commitments, thereby facilitating their implementation." The 1994 Agreement, however, notes that negotiated agreements, even if they are not endorsed by the assembly, "shall continue to be valid." Taken together, the 1991 and 1994 agreements thus establish a dual process of secret negotiations of agreements between the conflict parties and of a parallel popular consultation and endorsement process.

2.4 The mandate of mediators

Given the often-deep mistrust between parties beginning a negotiation process, they frequently rely on the provision of facilitation and/or mediation services by outsiders. Beyond the agreement to seek such services, it is also essential to agree a mandate for a facilitator or mediator. Moreover, it is important that there is only a single mediator and mediation process, to avoid the fragmentation of a peace process into several, competing formats.

Mediators can come from a variety of backgrounds: chairpersons or secretaries-general of regional and international organisations or their special envoys, eminent persons, or heads of state or government of specific countries such as regional or great powers, or donors or their designated representatives, or from NGOs or religious organisations. The dynamics and challenges of the mandate will often depend on who the mediator is, and whether she or he is invited by the parties or appointed – for example by the UN Security Council or a regional organisation's equivalent, such as the AU Peace and Security Council. The mediator's own experience and background will normally also enable him or her to influence the mandate to a certain extent. The "right" mediator can add a further element of assurance to the parties that the negotiation process will be conducted impartially and seen through to a successful conclusion.

Mandates normally include, in different combinations, the authority to: convene meetings (time and venue), consult parties individually, consult external actors (such as donors, groups of friends), consult other stakeholders (such as civil society organisations not directly participating in negotiations), propose an agenda and/or timeline for negotiations, draft texts to advance negotiations (noting areas of agreement and/or disagreement), propose new ideas when negotiations are in a stalemate, and liaise with media. Box 4 gives two examples of mandates for mediation.

2.5 Participation

Parties to a pre-negotiation agreement are obvious participants in subsequent negotiations. Reaffirming participation in future negotiations, however, serves the purpose for the parties of formally acknowledging and recognising each other's role, implying an acceptance of each other's place at the negotiation table. The 2008 Zimbabwean Memorandum of Understanding illustrates this approach well: "The Parties shall mean ZANU-PF and the MDC formations led by Morgan Tsvangirai and by Arthur Mutambara, respectively."

Box 4
Examples from El Salvador and Nicaragua

The 1991 Geneva Agreement on the peace process in El Salvador specifically provides:
"The process shall be conducted under the auspices of the Secretary-General [of the United Nations], on a continuous and uninterrupted basis.
… the negotiating process… shall involve two types of complementary activities: direct dialogue between the negotiating commissions, with the active participation of the Secretary-General or his Representative, and an intermediary role of the Secretary-General or his Representative between the parties…
… The only public information on… progress shall be that provided by the Secretary-General or his Representative.
The Secretary-General, at his discretion, may maintain confidential contacts with Governments of States Members of the United Nations or groups thereof that can contribute to the success of the process through their advice and support."

In their Agreement on the Functions of the Conciliation Commission, the Government of Nicaragua and YATAMA ("Sons of Mother Earth"), as the political representative of the indigenous population of Nicaragua's Atlantic Coast region, the parties agreed to setting up a commission of external religious figures and mandate it to:

- facilitate communication between the parties
- formally chair meetings and serve as moderator in the talks, try to clarify issues that may lend themselves to misunderstandings, and make lists of points of mutual interest to be discussed
- oversee the favourable progress of talks
- oversee and bear witness to compliance with the agreements
- make recommendations
- arrange the time and place for meetings.

In addition, parties, at times, may also agree on broadening participation in negotiations to others, thereby implicitly inviting them to participate and conferring a particular status on such other parties. This can be one of equal participant in negotiations or of a consultative role alongside negotiations. Hence the June 2003 Accra Agreement on Liberia stipulates that signatory parties

must engage with "all other Liberian political parties and stakeholders" within 30 days of the date of signature, to precisely reach as comprehensive an agreement as possible. Alternatively the 1990 Oslo Agreement on Guatemala illustrates how other parties can be included through a consultative process in negotiations. It stipulates that "The National Reconciliation Commission shall, by mutual agreement with URNG, create the mechanisms required for the convening, preferably in June 1990, of the necessary meetings between the URNG and representatives of the country's popular, religious and business sectors, as well as other politically representative entities, with a view to finding ways of solving the nation's problems."

In addition to deciding the inclusion of participants in a negotiation process, it is also crucial to determine the authority that negotiators have. The greater their authority to conclude agreements (which may still be subject to parliamentary or popular ratification), the more likely it is that a negotiation process will conclude quickly and successfully. Guatemala's 1991 peace agreement hence specifies that high-level delegates representing the government and the URNG will be tasked to "negotiate and conclude political agreements in accordance with the existing constitutional framework and with the El Escorial agreements."

Conflict settlement negotiations can eventually succeed only if they include all major stakeholders in a conflict and peace process. Otherwise, negotiations and peace agreements risk being derailed by spoilers. If some parties reject the inclusion of others, or refuse to sit in the same room or at the same table with them, mediators could propose alternative negotiation formats, such as proximity talks, to protect the inclusiveness and integrity of a peace process.

2.6 Agenda setting

In many peace processes, agendas for talks are highly contested as they derive from particular interpretations of the conflict and its causes (i.e., what issues need to be addressed to achieve a sustainable settlement) and potentially shape the outcome of negotiations (i.e., which "solutions" will not be considered). Agenda setting also needs to be sensitive to using neutral terminology on potentially contentious issues. "Constitutional issues" is less provocative to some than "constitutional reform", "territorial self-governance" may be more acceptable than "federation" or "autonomy". As such, agenda setting is often a negotiation process itself, within pre-negotiation agreements.

Box 5
Direct agenda setting: El Salvador and Zimbabwe

In the context of the peace process in El Salvador, the parties achieved agreement on a "General agenda and timetable for the comprehensive negotiating progress" in May 1991, following, and reflecting, their agreement a month beforehand on more general principles, including the overall objective of their negotiations, their format, and facilitation by the UN Secretary-General. The general agenda included seven areas in which political agreement was to be achieved, as well as the requirement to agree on the modalities of a cessation of the armed conflict, and, mapping onto the areas of political agreement, eight dimensions in which the parties were to seek consensus on the reintegration of FMLN members. The agreement specifically notes that "[t]he sequence of the items listed [i.e., areas of agreement] for each phase does not imply a strict order of consideration and may be changed by mutual consent."

The 2008 Zimbabwean Memorandum of Understanding set a very detailed agenda as follows.

1. Objectives and priorities of a new government
    - 1.1 Economic
        - 1.1.1 Restoration of economic stability and growth
        - 1.1.2 Sanctions
        - 1.1.3 Land question
    - 1.2 Political
        - 1.2.1 New constitution
        - 1.2.2 Promotion of equality, national healing and cohesion, and unity
        - 1.2.3 External interference
        - 1.2.4 Free political activity
        - 1.2.5 Rule of law
        - 1.2.6 State organs and institutions
        - 1.2.7 Legislative agenda priorities
    - 1.3 Security
        - 1.3.1 Security of persons and prevention of violence
    - 1.4 Communication
        - 1.4.1 Media
        - 1.4.2 External radio stations
2. Framework for a new Government
3. Implementation mechanisms
4. Global political agreement.

Agenda setting can be direct and indirect. Direct agenda setting involves an agreement on specific areas to be considered by the parties during negotiations. Crucially, thus, the agreed agenda determines a sequence in which the different areas are to be negotiated (and, by implication, that they should be negotiated sequentially rather than in parallel). This also offers parties a guarantee against unilateral change by requiring any changes to the agreed sequence to be dependent on mutual consent (Box 5).

Alternatively, agenda setting may be indirect, through reference to general principles to guide the approach by the parties to negotiations. For example, this may be through:

- already existing agreements
- relevant resolutions by regional and international organisations
- specific regional and international standards
- general principles of international law.

Such was the case in the July 1988 "Principles for a peaceful settlement in Southwestern Africa", a comprehensive illustration of an indirect approach to agenda setting. The Principles committed the governments of Angola, Cuba and South Africa to implement UN Security Council Resolution 435/78 (withdrawal of South African troops and free elections in Namibia), and confirmed an agreement between Angola and Cuba to accept on-site verification of their troop withdrawal from Namibia. The parties further committed themselves to, among other things: respecting the sovereignty and territorial integrity of states, and the right of the peoples of the southwestern region of Africa to self-determination and non-interference in their internal affairs.

While agendas for negotiations can be set by the parties themselves, it is also possible to leave agenda setting to the mediator, whose mandate might include determining the issues to be dealt with in each round of negotiations. It is also possible to give the mediator the power to submit suggestions to the parties for their approval, or to receive their suggestions and decide whether to adopt them. Along this line, the conciliation commission set up in Nicaragua in 1988 was tasked to "try to clarify issues that may lend themselves to misunderstandings, and (…) make lists of points of mutual interest to be discussed in due time."

2.7 Timetables for negotiations

Committing themselves to a timetable according to which a negotiation process should be completed indicates parties' seriousness about achieving a negotiated agreement to end their disputes. This can take different forms. As illustrated in Box 6, timetables can be established either:

- relative to particular milestones, such as a number of days/months following the signature of the pre-negotiation agreement and/or subsequent to completing different stages in the negotiations, or
- in absolute terms, giving precise dates by which specific elements of a negotiation process, or wider peace process, need to be completed.

It is also important to note that the provisions on this timetable link it to verification and require that subsequent agreements also include implementation timetables, which, in conjunction with verification procedures, can serve as guarantee mechanisms in negotiated settlements. Agreements on timetables can be strengthened further if they go hand-in-hand with broader commitments of the parties to negotiating in a constructive and timely manner as well as not unilaterally leaving the negotiation process. The 1991 Mexico City Agreement on Guatemala provides such a precedent, whereby the parties agreed: "not to abandon the negotiating process unilaterally and to pursue it without interruption… until the negotiation agenda is exhausted. They undertake to act in good faith in an atmosphere of complete mutual respect and reiterate their express determination to reach political agreements for achieving a firm and lasting peace that will bring the internal armed conflict in Guatemala to an early, definitive end."

It is important for mediators to be aware that timetables can also create problems. While absolute or relative deadlines can help to keep parties focused, they can also, if not reached, undermine parties' confidence in the mediator and derail an entire peace process. If parties are put under too much pressure by an unnecessary tight deadline, they may not be able to negotiate a sufficiently detailed and specific agreement to achieve sustainable peace. Leaving aside the occasional need for some constructive ambiguity in peace agreements, lack of specificity is a sub-optimal outcome par excellence and inevitably invites subsequent disputes during the implementation phase. Thus, allowing sufficient time to negotiate a comprehensive and detailed agreement is necessary and should be encouraged by mediators.

Box 6
Examples from Central America

The 1987 Esquipulas II agreement on a "Procedure for the establishment of a firm and lasting peace in Central America", between the presidents of Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica, provided for a timetable relative to the signing of the pre-negotiation agreement. This required the completion of specific phases of the peace process as follows.

- "Within a period of fifteen days from the signing of this document, the Central American Ministers of Foreign Affairs shall meet as an Executive Commission to regulate, encourage and facilitate compliance with the agreements contained in this document…"
- "Ninety days after the signing of this document, the commitments with regard to amnesty, a cease-fire, democratization, termination of aid to irregular forces or insurrectionist movements, and the non-use of territory to attack other States, as defined in this document, shall enter into force simultaneously and be made public."
- "One hundred and twenty days after the signing of this document, the International Verification and Follow-up Commission shall review the progress made in complying with the agreements set forth in this document."
- "One hundred and fifty days after the signing of this document, the five Central American Presidents shall meet to receive a report from the International Verification and Follow-up Commission and shall take the relevant decisions."

By contrast, the 1991 "General agenda and timetable for the comprehensive negotiating progress" in El Salvador demonstrates the use of specific dates in setting a timetable for negotiations. It states:
"the government of El Salvador and FMLN agree that the initial objective set forth in paragraph 1 of the Geneva Agreement of 4 April 1990 should be achieved by the middle of September 1990, provided that agreements are reached which are synchronised, have implementation timetables and can be verified where appropriate, so as to ensure that all the components of the initial objective are duly coordinated."

2.8 Decision-making methods

In general, negotiations are conducted on the assumption that any agreement will require the consent of all participants. Nonetheless, the parties may wish to emphasise the need for consensus. This is often the case in situations where there is distrust between the parties, a lack of confidence in the negotiation process, and/or a significant asymmetry of power between the parties.

Establishing a consensus rule in a pre-negotiation agreement implies an acceptance by parties not to take unilateral decisions or apply unilateral measures in relation to any item on the negotiation agenda. It therefore works as a guarantee mechanism aimed at demonstrating a commitment to a negotiated, mutually agreed outcome and helps build parties' confidence in each other and the negotiation process.

Box 7
Examples of consent agreements and methods

In the 1985 Bogota Accord, the Government of Nicaragua and MISURASATA agreed on the following procedure, implying the need for consent among parties and guarantors: "All agreements in the course of the negotiation process must be signed by all members of both delegations and countries and organisations present as guarantors."

The 1991 Mexico City Agreement for the peace negotiations in Guatemala similarly specifies that meetings will be conducted in accordance with usual standards of debate. No recordings shall be made of the meetings, nor shall minutes be taken. Any agreements reached shall be formalised in documents discussed and approved by the parties and shall be signed by the Conciliator, the Observer, the delegates of the parties, and the members of the National Reconciliation Commission.

2.9 Confidence-building and verification/monitoring measures [1]

A range of specific confidence-building measures often accompanies, and facilitates, a negotiation process. These can be unilateral commitments by one or both of the parties or joint undertakings. Crucially, they can act as guarantees in the sense that they can tie progress on an agreed agenda for negotiations to delivery of certain confidence-building measures, thus promoting compliance with an agreement on negotiations. Alternatively, failure to live up to specific commitments may carry certain penalties, such as a (temporary) suspension of negotiations, the exclusion of a party from negotiations for a period of time or the withdrawal of specific benefits extended by external actors, thus deterring non-compliance.

Security guarantees are prominent among confidence-building measures. For example, the July 1992 N'Sele Ceasefire Agreement on Rwanda established:

- A "neutral military observer group under the supervision of the Secretary-General of the OAU" for the purposes of monitoring and verifying the ceasefire. [2]
- A Joint Political Military Commission [3] to follow up on the implementation of the Ceasefire Agreement as well as the Peace Agreement to be signed at the conclusion of the political negotiations.

In establishing these two separate bodies, the N'Sele Agreement separates violations of the ceasefire from the ceasefire agreement and thus does not put the entire agreement at risk from a singular violation. Moreover, the mandate of the Joint Commission creates a mechanism with international participation that contributes to guaranteeing both the negotiation process and any subsequent agreement, thus providing for continuity in promoting parties' compliance with agreements reached.

Confidence-building measures to encourage compliance by the parties with an agreement work best if they combine both incentives and penalties, and clearly define the criteria under which either are triggered (Box 8). [4]

While confidence building is to some extent about positive measures that accompany a negotiation process, it is often equally significant for parties to make formal arrangements with respect to particular actions that they agree not to take. The 2008 Zimbabwean Memorandum of Understanding hence states that

Box 8

Incentives and penalties, Belgrade Agreement between Serbia and Montenegro, 2002

This agreement preserves an existing status quo in principle, makes changes dependent on proper accounting for parties' interests, and offers both incentives for compliance and possible sanctions for non-compliance.

- The level of economic reforms reached in Serbia and Montenegro shall be a proceeding point for regulating mutual economic relations.
- The member states shall be responsible for unhindered operation of a common market, including the free flow of people, goods, services and capital.
- Harmonisation of the economic systems of the member states with the EU economic system shall overcome the existing differences, primarily in the spheres of trade and customs policies.
- In both regards, economic reforms that have already been carried out in the member states shall be taken into full account, while solutions that would provide for the quickest integration into the European Union shall be accepted. Transitional solutions in harmonising trade and customs policies should take into account the interests of the member states.
- The European Union shall assist in the accomplishment of these objectives and monitor the process on a regular basis.
- The modalities for the achievement of these objectives shall be elaborated in parallel with the Constitutional Charter.
- If one of the member states believes that the other does not live up to commitments under this agreement concerning the operation of a common market and the harmonisation of trade and customs policies, it shall reserve the right to raise the matter with the EU in the context of the Stabilisation and Association Process with the view to the adoption of appropriate measures.
- The EU shall guarantee that, if other conditions and criteria for the Stabilisation and Association Process are fulfilled, the agreed principles of constitutional organisation shall not be an obstacle to a rapid conclusion of the Agreement on Association and Stabilisation.

parties will refrain from using "abusive language that may incite hostility, political intolerance and ethnic hatred or undermine each other". It further entails that the signatory parties abstain from unilateral moves on key topics. Hence they commit not to take "decisions or measures that have a bearing on the agenda of the Dialogue, save by consensus. Such decisions or measures include, but are not limited to, the convening of Parliament or the formation of a new government."

At times, formal negotiations cannot get underway because one or more of the parties and their representatives may fear arrest and prosecution. In such circumstances, granting at least temporary immunity is an essential step towards creating confidence in a negotiation process. The same logic applies to pardons, prisoner release and exchanges. Such arrangements can be further strengthened when their monitoring is a clearly defined responsibility as part of the peace process implementation. For instance, this has been the case in the 1996 Moscow Agreement on Tajikistan. Amnesty, pardon and prisoners release are part of the agreement and a "Commission on National Reconciliation" is established as a mechanism to monitor parties' compliance with the Moscow Agreement. The role of the Commission as a guarantee mechanism is further strengthened by mandating its close cooperation with the UN Observer Mission and the OSCE Mission in Tajikistan.

Finally, in some peace processes, negotiations may stall and resume later, according to a new agreement. In such cases, the question arises of how to deal with previous agreements, and it is quite common, as a further confidence-building measure, to reaffirm pre-existing agreements. For example, the 2001 Kuala Lumpur Agreement in the Mindanao peace process notes: "The Parties commit to honour, respect and implement all past agreements and other supplementary agreements signed by them."

2.10 Ratification and implementation

A final point of significance for conflict settlement negotiations is how a pre-negotiation agreement and the envisaged outcome of negotiations are to be ratified and/or implemented. This is partly dependent, of course, on the outcome envisaged at the conclusion of a negotiation process. If negotiations are to lead to specific new laws, for example, these will require parliamentary debate and approval. Constitutional amendments or entire new constitutions will normally require endorsement by parliament and/or a popular referendum (Box 9). It is also conceivable to imagine a referendum on a peace agreement which then mandates the passage of laws and constitutional amendments by parliament.

Box 9
Provision for constitutional review in Kenya, 2008

As part of the Kenya National Dialogue and Reconciliation, the parties agreed in March 2008 on a framework of "general parameters and principles for the establishment of a constitutional review process".

- The parties accept that the constitution belongs to the people of Kenya who must be consulted appropriately at all key stages of the process, including the formation of the process itself, the draft, the parliamentary process and any final enactment.
- There will be five stages in the review of the Constitution and there will be a consultation with stakeholders in each stage:
  1. An inclusive process will be initiated and completed within eight weeks to establish a statutory Constitutional Review including a timetable. It is envisaged that the review process will be completed within 12 months from the initiation in Parliament.
  2. Parliament will enact a special "constitutional referendum law" which will establish the powers and enactment processes for approval by the people in a referendum.
  3. The statutory process will provide for the preparation of a comprehensive draft by stakeholders and with the assistance of expert advisers.
  4. Parliament will consider and approve the resulting proposals for a new constitution.
  5. The new constitution will be put to the people for their consideration and enactment in a referendum.

It is important for mediators to be aware, and make the parties aware, that formal ratification of a peace agreement between them is not automatic or problem-free. Committing to holding a referendum on any negotiated settlement or tying it to approval by a (newly) elected parliament may appear democratic, but at the same time increases the risk that parties defect from the settlement and campaign against it in a referendum or election campaign. Mediators should therefore also encourage parties, to the extent necessary and possible, to prepare their constituents for an agreement which will inevitably involve concessions and compromises if it is to last and lead to sustainable peace. This also means that mediators need to think carefully about how they can preserve the integrity of a peace process by balanc-

ing the need for confidentiality with public information to facilitate both the successful conclusion of negotiations and the subsequent ratification of the agreement achieved.

2.11 Conclusion

Negotiation processes are commonly structured around nine different issues: purpose, format, mandate for facilitation and mediation, participation, agenda, timetable, decision-making methods, confidence-building measures, and ratification and implementation of a negotiated agreement. On each of these issues, parties to formal or informal pre-negotiation agreements, and those mediating between them can avail themselves of different options in terms of both how to structure future negotiations and what mechanisms and arrangements to include in order to offer guarantees of compliance.

Such guarantees are essential to give mediators a reference point during negotiations, and to give parties confidence in the process and its outcome. Guarantees can range from informal and non-binding agreements and understandings to legal, constitutional and international guarantees to promote compliance and deter non-compliance. While the promise of such guarantees, on paper at least, is often significant, guarantees have limitations and cannot normally make up for a lack of genuine commitment by the parties to negotiate sincerely and in good faith.

International assistance is often crucial in strengthening guarantees, especially by providing rewards for compliance, and occasionally by applying sanctions for non-compliance. The presence of international mediators, equipped with sufficient resources, may assist in breaking deadlocks and resuming negotiations. Yet, as international involvement is unlikely to be indefinite or always quickly available, guarantees that rely on domestic mechanisms and procedures are essential complements to international mechanisms. This is particularly important for guarantee mechanisms that reach beyond the negotiation process into an actual settlement. In other words, parties' commitment to the full range of guarantees in a pre-negotiation, and a commitment to extend such guarantees into an actual settlement, are vital to build mutual confidence and overcome gaps in trust at the beginning of a peace process.

Guarantees often materialise over time in a range of sequential informal and formal agreements that advance a peace process from talks about talks to actual negotiations and finally to a settlement and its implementation. This incremental process reflects both the complexity of the conflict and the need to build trust between parties – two issues that mediators need to be fully aware of and consider in their efforts to structure an ultimately successful negotiation. In turn, such a gradual process also indicates growing confidence among and between the parties in the negotiations and their end result. This underscores the importance of incorporating guarantees into agreements as a means to assure parties that agreements negotiated in good faith offer a path to peaceful and sustainable conflict settlements.

Chapter 3:

Confidence Building Measures (CBMs) in Peace Processes

Simon J. A. Mason / Matthias Siegfried

3.1 Introduction

This chapter argues that the use of Confidence Building Measures (CBMs) can be an effective tool for preparing and deepening peace negotiations and mediation. At the same time, the usefulness of CBMs is often overestimated and this calls for a careful consideration of their limitations. The term "CBMs" can have different meanings in different contexts. This chapter tries to counter a common misunderstanding that sees CBMs as only relevant in the military field, a narrow view that stems from the historical role that CBMs played in the Cold War.[1]

Actors involved in violent, political conflicts have no confidence in each other and will often not even talk together, let alone enter serious negotiations or joint problem solving. However, a minimal degree of confidence in each other and in the negotiation process is indispensable for actors in a conflict to negotiate mutually acceptable outcomes.[2] Mediators assisting negotiations will therefore seek to build confidence in all their efforts and throughout the entire mediation process.[3]

CBMs can improve relationships, humanize the other, signal positive intentions and commitment, and avoid escalation. Through CBMs, mediators try to "humanize" the conflict parties and to break down the image of an impeccable villain, usually incarnate beyond redemption.[4] The aim of CBMs is not to make people like each other or to address the root causes of the conflict. Rather, the idea is to help build a working trust by addressing easier issues, which will then allow parties to address the root causes of a conflict through substantive negotiations.[5] CBMs are therefore not an end in themselves, but rather useful

"CBMs are not intended to deal with the root causes of conflicts, but advocates argue that these measures are the first step in turning hostile relationships into more accommodating ones. It is often said that 'if CBMs won't work, nothing else will'."

Marie-France Desjardins (1996)

steps in the ladder to negotiating and implementing peace agreements that address the key strategic concerns of the parties.

However, CBMs are not a magic answer to protracted conflicts: where there is no political will for negotiations, CBMs alone are unlikely to make the difference. So, while they are one important tool for mediators seeking to build confidence, CBMs are not the only tool to build confidence, and lack of confidence is not the only obstacle in negotiations.[6]

To use CBMs effectively mediators must know what CBMs are; the possible aims of CBMs; the different types of CBMs and the different types of actors involved in them; and when they can be used. This chapter also highlights some of the main challenges and limitations in the use of CBMs, as well as various options to deal with these challenges. It concludes with ten guidelines on how to design, mediate and use CBMs – thereby summarizing the essential points of this chapter.

3.2 What are CBMs?

CBMs can be understood as a series of actions that are negotiated, agreed and implemented by the conflict parties in order to build confidence, without specifically focusing on the root causes of the conflict.

Although broader than a purely security oriented definition of CBMs, this definition is narrower than many other definitions of CBMs, as it is focused on *negotiated actions*.[7] The reason for this is twofold: firstly, if CBMs are defined too broadly they can mean anything and nothing, thereby losing their conceptual clarity; secondly, a series of jointly agreed actions is better for building confidence than a single event, a unilateral action or a purely verbal CBM. Confidence can be built through dialogue alone, but there is always the danger of misunderstandings and the possibility of intentionally misleading each other with words. Actions can also be misinterpreted in a hostile environment, yet because actions require greater effort than words, they are generally more credible and useful in helping conflict parties read each other's intentions.[8] At the same time, mediators ought to avoid automatically considering all concrete actions in a peace process, such as prisoner exchanges, as CBMs. Parties might have certain motives for such acts that have nothing to do with building confidence. Thus, it is only when the purpose behind a given action is to increase confidence between parties or their constituencies that they can be considered real CBMs.

3.3 Why use CBMs?

CBMs aim to build confidence. Confidence is a psychological state, whereby actors make themselves vulnerable and ready to take risks based on the expectation of goodwill and positive behaviour from a counterpart.[9]

There are three objectives to the use of CBMs:

- **To prevent escalation**

CBMs can be used to avoid a conflict escalating, even if no negotiation process is to be started in the short term. As such, preventing escalation has value in itself and may also help start a process later on. CBMs can also be used as a conflict prevention tool, for example if actors from different communities engage in joint service delivery projects, even if they are in denial of any tensions that could escalate. Joint service delivery projects initiated in the 1990s in northeast Kenya helped to prevent inter-community tensions from escalating (see Box 1). More formal CBMs were also used between Guatemala and Belize to prevent disputes from escalating (see Box 2).

"When people are in denial that there is a conflict and do not accept mediation, you can work on structural, underlying tensions by doing joint service delivery projects, for example water points, which are co-owned, co-managed across the conflict cleavages."

The late Dekha Ibrahim Abdi (interview, 2011)

- **To initiate and deepen negotiations**

Negotiations involve a process of decision-making and strategizing in which parties jointly seek mutually acceptable outcomes. Successful negotiations require risk-taking by the parties, in order to seek new ways of addressing the conflict. That is why a minimal degree of confidence is needed for negotiations to commence and develop. For the parties, CBMs are attractive because they are seen as low-cost and low-risk activities, since they can be implemented with limited resources and calculated risks. As CBMs are usually reciprocal in nature, one actor is not going out on a limb without the other also doing so. Costs are minimal

Box 1
Kenya: CBMs on the local, regional and national level

In the 1990s, there was recurring famine and drought in northeast Kenya, yet limited governmental management of the situation and growing inter-clan tensions. In this context, a series of innovative CBMs were launched on a track II and III level. Women's groups, in collaboration with traditional elders, religious leaders, youth groups, business actors and local authorities, developed a series of joint service delivery projects including establishing a system regulating access to market places (irrespective of clan affiliations); the creation of education and job opportunities; and the implementation of an early warning and early response monitoring system. These types of CBMs were developed as a result of dialogue between the different actors and went hand-in-hand with different local and regional peace agreements. Similar systems were later replicated in other parts of the country. [10]

During the Kenyan post-election crisis in 2008, the *Seven point agenda for peace, truth and justice of the Concerned Citizens for Peace* highlighted that: "Deliberate efforts need to be undertaken to rebuild trust and confidence between and among political players to enhance the capacity for dialogue and constructive engagement." As a consequence, the following CBMs were suggested: media CBMs (250,000 Short Message Service [SMS] messages were sent by mobile phone to shun hatred and tribalism); social CBMs (the establishment of joint mourning sites, common flowers laid in Uhuru Park, and cross-party funerals, as well as different educational programmes); cultural CBMs (Kenyan music celebrities encouraging peace and tolerance); and humanitarian CBMs (humanitarian assistance with the Red Cross and efforts to host displaced people). [11] These CBMs, which were initiated by civil society, helped to complement the international peace mediation effort by Kofi Annan as well as the efforts of the Kenyan army to pacify the country.

as CBMs are usually non-binding or politically binding. In some cases, such as a prisoner release or protection of negotiators, they may be legally binding, but this is rarer. The incremental use of CBMs means commitments can be revoked if they are not seen as being beneficial, and this also helps to minimize concerns about using them. In stalled peace processes, for example in the Western Sahara case, CBMs can be useful in minimizing the negative impact of the conflict and in showing some goodwill to try and push the negotiation process forward (see Box 3 on how CBMs are used to deepen negotiations in the Western Sahara process).

- **To consolidate the process and its outcome**

Wider constituencies may view a peace process with scepticism, before, during and after peace negotiations. Humanitarian CBMs can help those directly in need while communication CBMs can help inform civil society of the agreement (as was the case in the Nuba Mountains Ceasefire Agreement, Box 4). Once an agreement is signed, CBMs may also be needed to consolidate confidence in order to help implement the agreement.

Box 2
Belize and Guatemala: Multi-sector CBMs as a way of keeping small conflicts from escalating

The territorial dispute between Belize and Guatemala goes back to colonial times. A series of CBMs were agreed to ease tensions and facilitate the conciliation process that was initiated in 2000 under the auspices of the Organization of American States (OAS). After an agreement on territorial issues was rejected by the governments of Belize and Guatemala in 2003, the OAS facilitated an agreement on CBMs between the parties with the aim of facilitating a new round of talks. These CBMs included military and police patrols; contacts between defense ministries; co-operation in response to natural disasters; promotion of community-to-community contacts; and prevention of illegal activities in the Adjacency Zone (the territory located within one kilometre east and west of the disputed North-South Adjacency Line). The agreement requested the General Secretariat of the OAS to monitor the implementation of the agreement, which it did through a civilian peacekeeping mission (this involved verification, following-up incidents, early action to avoid escalation and communication with key actors). The verification of CBMs helped to avoid small conflicts from escalating. However, political negotiations did not end the dispute. Rather, in 2008, the Secretary General of the OAS recommended that the parties submit the dispute to the International Court of Justice.

3.4 Who should be involved in CBMs?

Three different types of actors can be involved in CBMs: negotiators, decision-makers and the wider constituencies.

The **negotiators** representing the parties to a peace process can be involved in CBMs with the aim of building enough working confidence among negotiators to start, or deepen negotiations (see Box 6).

However, even if the negotiators trust each other and are working towards an agreement, their constituencies and superiors may have no confidence in, and may distrust, the entire peace process. CBMs involving these actors can help to create support for the process.

Beyond the formal negotiation table, therefore, the second group that can be involved in CBMs includes the elite and political, security, economic and social decision-makers. Since they are **decision-makers**, they may need to be involved in CBMs even if they are not actually at the negotiation table. Often negotiators will be receiving their negotiation mandate from these decision-makers and will refer back to them for key decisions (see Box 7).

The third group that can be included in CBMs are the **wider constituencies** who are affected by the negotiations, and who will also need to develop confidence across conflict cleavages if the peace agreement is to be supported and accepted by them.[12] Many initiatives that bring together representatives from the wider constituencies on both sides can help to create an atmosphere of trust between them, as well as confidence in the peace process. CBMs can also be developed by these representatives who support the peace process on the Track I level (see Box 1).

3.5 Different types of CBMs

CBMs can be sorted into those associated with the political, security, economic and social sectors – even if a neat categorisation is not possible or even desirable.

Care is needed to distinguish between "actors" and "activities" when looking at the various types of CBMs. For example, a prisoner exchange has a humanitarian dimension, but if the prisoners are politicians or military personnel then such an exchange will also affect the other sectors. The cross-sector links

Box 3

CBMs in Western Sahara, addressing humanitarian concerns in the absence of a solution

A United Nations (UN) brokered ceasefire brought an end to the open fighting between Morocco and the POLISARIO in 1991. Since then the parties have tried to find a mutually acceptable solution to the future status of the Western Sahara territory, but without success to date. The conflict is having severe humanitarian consequences for the population living in and around the Western Sahara territory. Against this background, the UN High Commissioner or Refugees (UNHCR) has implemented a CBM programme in order to tackle the humanitarian needs of the refugees and to "contribute to establishing a certain level of confidence among the parties concerned in the conflict in Western Sahara". The CBMs, which started in 2004, have primarily focused on visits (by plane) between Sahrawi refugees living in camps (in Tindouf, Algeria) and their family members living in the territory of Western Sahara. These families have been separated for almost a generation. Free telephone services to connect the refugees with their relatives and activities in the "demining area" have also been launched. The humanitarian impact of these CBMs is hard to underestimate: uniting families (even if just for five days) that have been separated for decades by the conflict has a very strong humanitarian impact on the affected populations. However, it is much harder to assess whether such CBMs also have a broader impact on the political negotiation process facilitated by the UN. The various mediators have used the CBMs to highlight areas of shared values amongst the parties in the absence of a final solution to the conflict. In that sense, the negotiation of CBMs has become an arena in which the parties tackle practical issues of common concern. The CBM negotiations have also created some momentum in terms of encouraging the parties to move ahead with considering the more complex issues underlying the conflict in Western Sahara.[13]

are positive and should be reinforced.[14] CBMs vary greatly in terms of subject matter. Nevertheless, clustering CBMs into the various sectors is useful to help mediators understand their potential relevance at different moments in a process, as well as in response to particular characteristics of a conflict.[15]

- **Political CBMs**

The strategic purpose of political CBMs is to create trust between the parties in order to find political solutions to the conflict. Therefore, they can focus more narrowly on the negotiators in the peace process, or more broadly on the political landscape. CBMs between negotiators during the negotiations are essential to create the minimal trust for negotiations to work. Being accommodated at the same venue and having informal exchanges over lunch, for example, can help to create a better atmosphere. Joint events, such as watching football games together, are further examples (see Box 6). Those politicians not present at the negotiation site can also get involved in CBMs, for example, through exchange visits. Anwar Sadat's visit to Jerusalem in 1977 is a case in point, as it broke a long-standing Arab taboo of not dealing with the Israeli state. As well as affecting political decision-makers, political CBMs can also focus on wider constituencies. Parties can agree on a media style that allows for the development of an atmosphere of trust in society. In the Nuba Mountain Ceasefire Agreement, for example, the parties agreed to stop defamatory propaganda against the other side, and actively communicate the content of the agreement to the wider population (see Box 4). If an agreement is subsequently reached, constituencies will be familiar with its content and will be more willing to back it.

- **CBMs in the Security Sector**

In the security sector, CBMs in inter-state conflicts can be differentiated from CBMs in intra-state conflicts. Classical military CBMs focus on avoiding escalation triggered by a misunderstanding of signals.[16] In a highly hostile atmosphere, any behaviour of the other side is generally interpreted as being hostile, rather than as being a deterrent. The aim of these kinds of CBMs is to clarify the difference between an intended aggressive behaviour and the background noise of normal military activities, in order to avoid unintended escalation. Examples include communication hotlines, exchange of military maps, joint training programmes, information on troop movements, exchange of military personnel, establishment of a demilitarized zone, border tension reduction through joint patrolling, or no fly zones.[17]

In the context of peace processes between a government and an armed non-state actor, security issues can be dealt with simply as technical questions, or they can be used in a CBM logic to build trust and a working relationship between former adversaries. Joint monitoring teams, for example, have a specific security goal as they verify ceasefire violations. At the same time, security personnel from both sides of the divide work together and can thereby build trust. From a mediator's point of view, joint monitoring teams, as well as other

Box 4

The Nuba Mountains Ceasefire Agreement of 2002, paving the way for the North South Negotiations

In the post 9/11 context, US special envoy John Danforth approached the Government of Sudan (GoS) with a four point confidence building agenda, in order to test their willingness to negotiate an end to the North-South civil war. One of the four initiatives was a humanitarian ceasefire to end hostilities in a clearly defined area in Sudan. In January 2002, the Sudan People's Liberation Movement/Army (SPLM/A) and the GoS negotiated and signed the Nuba Mountains Ceasefire Agreement in Switzerland, mediated by the Swiss and the USA. The Nuba Agreement included numerous CBMs that benefited the population which had been directly affected by the conflict and also strengthened the trust, and showed goodwill between, the main parties. A key aspect was to freeze the forces so they could not be used in the conflict that was still ongoing in other areas in Sudan. CBMs included a Joint Military Commission that monitored the ceasefire but was also used strategically in the peace process as the parties began to work together, thereby developing a working trust between high-level military personnel. CBMs which benefited the affected population involved an agreement to open humanitarian corridors, provide access to the International Committee of the Red Cross, remove mines, and an agreement to communicate the Agreement to the civilian population so as to increase acceptability and outreach. The Agreement also had a media CBM aiming to stop defamatory propaganda. The Nuba Agreement was successful in the area it was designed for, and was key to building trust between the parties and between the GoS and the USA before the more complex and strategically important North-South negotiations were re-energized (between 2002 and 2005).[18]

security arrangements, should not be seen as only increasing security. They have significant potential to create trust and help parties develop a working relationship across the conflict cleavage. Designed and used in a "CBM logic", they can have positive spillover effects into the political sector[19] (see Box 4 on how the Joint Military Commission helped to create trust between the parties in the Nuba Mountains).

- **Economic and environmental CBMs**

Economic and environmental CBMs focus on joint economic endeavours or activities dealing with natural resource management and environmental challenges. Opening trade routes can help to ease tensions and benefit both actors. Co-operation over economic issues can often be a first step in collaborating across conflict lines. In Somalia, for example, actors from different clans and ideological inclinations are often very pragmatic about working together when it comes to doing business, for example trading in livestock across conflict lines. These economically-motivated collaborations can be seen as CBMs that could provide the building blocks for a bottom-up approach to a more comprehensive peace process. Other examples of economic CBMs include agreements to allow actors from different groups to access markets safely (for example, in the Kenya border area); agreements to open trade routes (for example, for pastoralists to access water points, or opening international transport routes to facilitate trade); joint economic development projects (such as the Korean Kaesong industrial region, or ideas for international pipelines); joint preparation against natural disasters; or peace parks (for example, in Southern Africa).[20]

Box 5

"Ping-Pong-CBMs" between the U.S. and China to build trust and highlight common ground

In the late 1960s, both the U.S. and China became eager to improve bilateral relations in order to balance the growing Soviet power. CBMs provided one of the ways in which trust could be established in this process of "rapprochement" despite some strong opposing positions on certain issues (namely regarding Taiwan). Both parties began sending public signals and started to open private communication channels. Shortly afterwards, initial visits took place including a Chinese invitation to the U.S. National Table Tennis Team that built some trust and created momentum for negotiations. These CBMs helped assure both sides that – despite fundamentally opposing positions – they had some political interests in common. Later on, both parties dropped their preconditions and an agenda was set in order to begin a high-level negotiation process including President Nixon's first, unexpected visit to Beijing in 1972.[21]

- **Social, humanitarian and cultural CBMs**

Some of the very first CBMs used, even before negotiations begin, are typically humanitarian CBMs. If parties agree on some basic humanitarian principles, not using anti-personnel mines for example, they signal commitment to international norms and possibly their preparedness to also try political means to reach their goals. Such CBMs help the affected population, but also provide conflict parties with the fresh start that is needed if they seek to try negotiations. Through such CBMs, they can signal to the other side an intention to change the status quo. A prisoner exchange is another typical humanitarian CBM (for example, the Gilad Shalit Fall 2011 exchange between Israel-Palestine, even if the trust-building goal did not seem to be the main or only motivation). Humanitarian ceasefires, that often include CBMs, can indicate the readiness of both sides to test an alternative approach (see Box 4). The negotiations surrounding such CBMs also help prepare the parties for future political negotiations, as negotiators pick up the necessary skills and know-how when negotiating the CBMs. Some of the Southern Sudanese actors involved in negotiating the Operation Lifeline Sudan in 1989 gained negotiation expertise that proved very helpful later on in the Sudan North South CPA negotiations.[22]

Social CBMs can include the release of information on missing persons (for example, in Bosnia Herzegovina), or allowing family visits (see box 3 for the Western Sahara example and box 8 when it comes to North-South Korea). Joint cultural events or student exchange programmes are other opportunities that can be used at all levels of society to humanize the other and build relationships. Joint sports activities have also been used in numerous cases to ease frozen relations and pave the way for negotiations (for example, between China and the U.S., see Box 5). Agreements which allow minorities to have rights to their religion and language can also be used as CBMs, even if they often go further than normal CBMs in terms of addressing the root causes of a conflict. In the implementation phase, joint language and educational projects may help to create trust throughout the wider society.

Links between sectors: The links between sectors, and how CBMs in one sector relate to other sectors, is one of the most vital aspects for mediators to be aware of and consider. Synergies and traction can be created through these links. At the same time, links between the sectors have to be clarified to avoid doing any harm. Links can also be developed by cross-matching activities and actors. Examples would be to have military actors involved in economic activities or businessmen involved in security CBMs.[23] Lists of CBMs are useful in showing how creative and diverse CBMs can be, but care is needed so as not to suggest that ideas can be copied and used on any given conflict. Template

solutions and CBMs that are not developed with the parties will not fit the given case, not be owned by the parties, and will not build trust. Since a mediator is the hub that connects the various topics and experts in the peace process, he or she is responsible for making sure the links between the different CBMs are used well. Clustering different types of CBMs and learning from other cases can be useful to develop ideas, but in the end it is vital that mediators design CBMs with the parties to ensure they are tailored to the specific conflict.

3.6 When should CBMs be used?

CBMs can be used in all phases of a peace process, but their nature and function changes if they are used before, during or after peace negotiations.

Many processes today are more complex than the classical, linear phase model of peace negotiations (informal talks, pre-negotiations, negotiations and implementation) with different actors being involved in different phases that take place at the same time. Nevertheless, the phases still give some orientation as to when to use CBMs:

- **Before a peace process begins and during pre-negotiations**

Even before a peace process begins, CBMs can be envisioned without necessarily focusing on using them to initiate a negotiation process. They can simply aim to build bridges between conflicting parties and minimize the damage of the conflict, even if the parties are not considering negotiations. In this early phase, CBMs are likely to be non-binding, social and humanitarian, but could possibly also include partial steps in the security field (such as a non-binding cessation of hostilities to allow a market to happen or to allow a celebration to occur). It is hard for any conflict actor to disagree with minimal humanitarian principles and actions and this is the reason why simple humanitarian agreements can often be a starting point (for example, not using anti-personnel mines). Economic CBMs (such as allowing access to the market place in Wajir, Kenya), which build on an economic rationale, can also be useful. In the "pre-negotiation" phase, parties are starting to consider negotiations more seriously as a credible strategy to solve their conflicts, even if it is not yet clear how, when and under which mediation framework this will happen. In addition to humanitarian and economic CBMs, the importance of political and security CBMs increases in this phase. The aim is for the parties to signal to each other their intention of testing negotiations and to show a certain degree of goodwill to try and enter the negotiation process.

"Building the parties' confidence in each other, in the mediator and in the process of negotiation is what the mediator ought to be looking for all the time at every stage of the game."

Laurie Nathan
(interview, 2011)

- **During negotiations**

During the negotiation phase, CBMs that increasingly address aspects of the conflict can help to push the process forward. Depending on the nature of the conflict and design of the mediation process, CBMs will play a different role. In some cases, parties can agree to key fundamental principles in a very general manner at the outset of a negotiation process, before the "sticky" details are negotiated. Through the initial agreement on principles, some trust is created. In this scenario, CBMs may still be used and may be important but they are not the only, or main, way to build trust. The Sudan North-South process between 2002 and 2005 successfully used CBMs to "humanize" the negotiators and push the process forward, even if there was an agreement early on about some of the key principles (see Box 6).

Box 6
CBMs in the Sudan North-South process

In the Sudan North-South negotiations, both the representatives of the Government of Sudan and the SPLM/A watched international football games together on a large TV screen. This kind of CBM has nothing to do with the conflict, but can be vital for breaking the ice and humanizing the negotiators. Later on in the process, the mediators also organised picnics and football games on site at the negotiation venue, of course making sure that the competitive element was minimized, that the teams were mixed, and that it was not the North playing against the South. These examples illustrate the types of CBMs used with negotiators in a process that had a framework agreement early on (the Machakos Framework in 2002 which was based on the principle to favour unity but provided the option for separation by referendum), but where trust was still low. The CBMs were useful to humanize the actors involved in the negotiations and thereby facilitate the negotiations.[24]

In other processes, which do not have such an initial framework agreement on basic principles, trust will be built more incrementally and they will thus rely more heavily on CBMs. In the incremental approach, a series of agreements are used to slowly tackle the more difficult core issues later on. In this approach, CBMs are used as stepping stones to create traction.[25] Agreements on CBMs early on help to build trust and interest in negotiating more complex agreements at a later stage. In this sense, CBMs represent opportunities for parties to collaborate on something that is not strategically important to them and, in so doing, build the trust needed to subsequently address the strategic issues. CBMs pull parties away from the obstacle they are blocked on, the rock they can't get off the road. Once there is confidence, it is then easier to later address this obstacle.[26] The metaphor of steps in the ladder also highlights the incremental nature of building trust which takes time and an accumulation of small steps. This is the reason why some practitioners speak about a confidence building process.[27] Once a first set of CBM has been established, more comprehensive undertakings can be developed. The peace process between Israel and Jordan illustrates the incremental use of CBMs (see Box 7).

Box 7
CBMs paving the way for the Israeli-Jordanian peace treaty

CBMs were an important element in the negotiations leading to the formal signing of the Israeli-Jordanian peace agreement in 1994. Examples of CBMs, such as mutual high-level visits across the border (including the late King Hussein, Crown Prince Hassan, and the late Prime Minister Rabin) signaled a change in attitude and relationship well beyond the political elite. At first, these meetings were taking place in a secret setting, but later on they become more public and regular. The CBMs built trust between the two countries and helped pave the way for a comprehensive peace agreement. Even after the signing of the peace treaty, CBMs (such as more frequent visits at various levels, including a crucial condolence visit by King Hussein in March 1997 after the killing of seven Israeli girls by a Jordanian soldier) continued to play an important role in this peace process and helped consolidate the transition from war to peace. As an example, visits among business actors encouraged some Israeli textile firms to move some operations into Jordan, thus providing employment for ordinary Jordanians.[28]

Box 8
CBMs on the Korean Peninsula: easing tensions, but no political breakthrough

The 1991 Basic Agreement included a chapter on "Exchanges and Cooperation", that provided the basis for non-military CBMs between North and South Korea. These non-military CBMs, e.g. economic projects and social activities (family reunion, tourist visits) progressed better than the envisioned military CBMs. By separating economics from politics, private-sector-led economic interaction was used by South Korea to engage North Korea and build trust, especially under the Sunshine Policy of South Korean President Kim Dae-Jung (1998 – 2003). After the inter-Korean summit of June 2000, progress was made in easing relations between North and South Korea through reunions of separated families, promotion of economic co-operation (for example, the Kaesong Industrial Complex, that involved an agreement on taxes between North and South Korea, cheap labour from North Korea, investment and management from South Korea) and various other forms of exchanges (such as those associated with sports, health and the environment). The CBMs, however, did not lead to breakthroughs on the political level. Tensions escalated as North Korea felt the USA was seeking forceful regime change (for example, the "axis of evil" speech of George W. Bush)[29] and the USA and South Korea increasingly felt North Korea was not serious about reciprocating CBMs and engaging in de-nuclearization, increasingly so after 2008 with the change of the South Korean administration. However, even when tensions have escalated, the Kaesong Industrial Complex has still continued.[30]

- **During the implementation**

During the implementation phase, CBMs can also be useful to maintain and increase the level of trust. In addition to external guarantees, external force and clear implementation modalities, this trust is vital to implementing and reinforcing peace agreements. CBMs among the wider public are important as benefits from the peace agreement affecting the broader community may not be tangible immediately. CBMs that deliver something tangible to the parties can help the constituencies live with the consequences of a peace agreement.

As the peace process develops, the nature of CBMs generally moves from non-binding, to politically-binding and sometimes even to legally-binding. In a similar manner, unilateral signals of good intention should develop into reciprocal CBMs that are balanced between the parties.

3.7 Challenges and options

Five challenges need to be considered when planning to use CBMs in a peace process.

- **Challenge 1: Avoid using CBMs when lack of trust is not a core problem**

Mediators are often confronted with at least three major obstacles in their work: the parties lack trust between each other and in the mediation process; the parties lack the political will to change the status quo[31]; and the parties lack a common understanding of the conflict and how to address it.[32] These three obstacles are strongly interdependent; for example, trust tends to increase the better the actors understand each other. At the same time, the greater the trust, the easier it is to listen and develop common understanding. An actor's will to change the situation can also develop hand-in-hand with an increase in trust and common understanding. Nevertheless, these three obstacles are also distinct from each other. In some conflicts, there is common understanding and even trust, but no political will to change the status quo. The UN-led peace talks on Cyprus seem partially to illustrate this dynamic, even if this dynamic was also greatly influenced by the incentives set by the European Union (Greek EU membership without agreement on Cyprus).[33] In other cases CBMs can help to ease tensions and pave the way for negotiations (such as the U.S. – China rapprochement in the 1960s outlined in Box 5 or the Nuba Mountain Ceasefire Agreement outlined in Box 4).

"There is an illusion amongst many mediators when it comes to CBMs: they believe that if only the parties get to trust each other, all conflicts could be solved peacefully – this is a psychological 'goody-goody' notion about mediation and simply naïve."

I. William Zartman
(interview, 2011)

This differentiation is important, because it only makes sense to use CBMs in cases where lack of trust is a key factor in hindering negotiations. In cases where trust exists, but there is lack of common understanding (which also includes factual knowledge, for example on technical issues) or will, CBMs are not the right tool. In such cases techniques such as capacity-building workshops, dialogue workshops seeking to clarify misunderstandings related to different perceptions, bringing in experts with technical expertise and bringing in moral authorities to discuss values that shape the will to change the status quo, may be more appropriate.

One way to deal with this challenge, is to assess how far lack of trust, lack of will and lack of common understanding are hindering the process, and then to design appropriate measures.

- **Challenge 2: Take care that CBMs are not used as a stalling or cover-up tactic**

Another aspect to assess when considering CBMs is the possibility that parties will use CBMs as a stalling tactic and as an excuse for not negotiating. CBMs can be used by parties to signal to the international community or their constituencies that "they are doing something" even if, in reality, they have no intention of changing the status quo or listening to the other side. In this way, parties can jeopardize the very idea of CBMs – to build trust – if they only use them as a cover up for stalling. CBMs can also be used to deflect or postpone negotiations on more significant issues.[34] In some cases, it seems CBMs were used to play for time, while in fact a military strategy to solve the conflict was pursued. For example, in the Ivory Coast in 2005, a so-called "Confidence Zone" had been established that ran across the country to separate the rebel-held north and the government-held south. The zone should have provided for basic security of ordinary citizens living in the zone. Over time the situation deteriorated and gave rise to citizens' feeling of insecurity, rather than increased confidence.[35] In other cases, the actual negotiations of the CBMs took so long, that it stole away time for negotiating more substantive issues. For example, on numerous occasions in the Cyprus peace process this seemed to be the case, even if one can also argue that the parties may not have wanted to address the substantive issues and so working on CBMs was better than doing nothing.[36]

"Parties are often suspicious about CBMs because they are seen as the beginning of a 'slippery slope' leading to constraints and reductions of autonomy"

Marie-France Desjardins
(1996)

A mediator's main option in dealing with this challenge is to clarify the motivations of the parties for using CBMs, whether bilaterally with the parties or together in plenary meetings.

- **Challenge 3: Be aware of "overly successful" CBMs that can distract from real negotiations**

Yet another consideration when thinking of using CBMs is to assess whether they will distract from negotiations because they are too successful. CBMs address symptoms of the conflict, rather than the root causes. If CBMs are overly successful, they may take the pressure away from the parties to address the key issues and they may no longer have an incentive to negotiate. In this case, mediators will seek enough successful CBMs to initiate negotiations or move the negotiations on the root causes forward, while avoiding so many CBMs that they can be misused for strong public relations purposes by the parties or they limit the negotiation process only to CBMs. Both having too many CBMs and only focusing on CBMs may take the pressure off the negotiations on substantive issues. Enough dissatisfaction with the status quo is needed to negotiate an agreement. Discussing this dilemma with the parties may be useful to assess the balance needed.[37]

- **Challenge 4: Watch out for unilateral, asymmetric and "false" CBMs**

In some cases, it might be easier for the mediator to ask one of the parties to commence with a unilateral CBM to which the other party can respond in a positive manner. However, there is a risk that, in such a unilateral approach, one of the parties might lose face or might claim victory over the other side. In the Korean peninsula, South Korea felt the CBMs were not being sufficiently reciprocated, especially from 2008 onwards (see Box 8). Premature concessions that are not reciprocated can increase mistrust.[38] In cases where power asymmetry is significant, the more powerful actors can sometimes initiate a change in relationship through a unilateral CBM, and due to their relative power, not risk very much. Thus, in situations where it is the only way to break the deadlock, the mediator might (with the tacit agreement of all parties involved) ask one of the parties to make a unilateral gesture.[39]

In most cases, however, CBMs are most effective if they are designed in a "symmetric manner", whereby all the parties agree to, and implement, a joint CBM at the same time. However, even symmetrical CBMs can lead to asymmetrical impacts, where generally the weaker party is disadvantaged. "False" CBMs are built to look like CBMs but only affect one side instead of both, or all, sides. Even if mediators seek to design balanced CBMs, they may end up as false CBMs, and mediators will end up being perceived as biased. Truly symmetric CBMs should have symmetric impacts, which make it impossible for any one side to either lose face or claim victory. This approach will also help the mediator to preserve impartiality as none of the parties is being seen as responding to a demand of the mediator.

For these reasons, mediators need to carefully plan and discuss the CBMs with the involved parties, and assess their impact on the ground. The timing and degree of commitment needed for the CBMs to work has to be negotiated with the parties.[40] Equality is a key principle in the design of CBMs. However, if equal CBMs lead to unequal impacts, CBMs must be designed in such a way that more is demanded from the party claiming superiority.[41] As mediators take care of the process, and parties of the content, the final responsibility and decision on what type of CBMs will be chosen rests with the parties. Mediators can bring in experts and comparative experiences from other cases but, in the end, the parties need to decide how far they want to go and what risks they are willing to take.

- **Challenge 5: Avoid unrealistic, fuzzy, non-verifiable and non-implementable CBMs**

Agreements on CBMs often lack sufficient details on how they will be implemented and measured.[42] The danger of CBMs that are not clear and not verifiable is that they are not implemented, or that they are asymmetrically implemented. This can lead to greater distrust than before. This is why CBMs need clarity on their implementation, including verification mechanisms such as implementation reviews or Joint Commissions. A modest CBM that has clear implementation modalities is preferable to ambitious CBMs that are unclear in terms of how they will be implemented. Verification mechanisms can be integrated into the CBMs to help the parties measure and report on the implementation. These verification mechanisms ideally involve the parties as well as some acceptable third party.[43]

3.8 Ten guidelines for mediating CBMs[44]

The actual form of mediating a CBM agreement between parties is, in general, similar to mediating any other type of agreement. However, there are some specific issues that have to be considered.[45] In the first instance, the mediator should clarify with the parties what CBMs are, what their purpose is, why they are used, and how they can build into a process that aims to deal with the more fundamental issues later on. Mediators may bring up the idea of CBMs as early as the pre-talks stage, outlining how they can be used. Ideally the ideas for CBMs come from the parties, but the mediator may also suggest ideas. Subsequently, the mediator ought to clarify why the parties may be interested in CBMs. The intentions and motivations behind agreeing CBMs are important which is why this has to be explored. As well as these questions, the following 10 guidelines are a useful reminder that CBMs ought to be:

1. **Tailor-made:** CBMs must fit the case. They should not be over-demanding or too complicated. Most CBMs fail because they are too ambitious. The purpose of CBMs should also be clearly articulated.

2. **Simple:** CBMs should be seen by the parties as being simple while being important. Simple CBMs are preferable, especially early on, because tackling complexity too early can lead to mistrust. CBMs should not lead to protracted negotiations.

3. **Visible:** as they seek to signal intent, CBMs should have high visibility among the designated target audience (conflict parties and their constituencies).

4. **Verifiable:** CBMs should be easy to control or monitor. Clarity on verification mechanisms is essential as lack of implementation leads to greater mistrust.

5. **Clear about "what if" scenarios:** CBMs should be clear in terms of what will happen if they are violated. Without such clarity, CBMs will be ineffective.

6. **Linked to a process:** CBMs should either be linked to additional CBMs, or to more substantive negotiations, so that they push the peace process forward. CBMs are a means to something else, and not an end in themselves.

7. **Applied in several sectors:** CBMs should not solely concentrate on one sector (for example, the military). If possible, they should be carried out in the political, security, social and economic sectors and be culturally sensitive.

8. **Low-cost:** CBMs should remain easy to do and not be too costly for the parties. If they are not low-cost, the hurdle to implement them is too big.

9. **Not predetermine the future:** CBMs should build confidence but not predetermine any future steps of the mediated process. They should not limit the scope of the negotiations.

10. **Have equal impact:** CBMs must be level and affect both sides equally. If they only demand effort from one side, they will not create confidence.

3.9 Conclusions

CBMs are an important tool which can build trust in a relatively low-cost, low-risk manner. As trust is an essential pre-requisite for effective negotiations, CBMs can help to initiate or deepen negotiations. Even before a peace process begins, CBMs can help to improve relations. In stalled peace processes, where parties are willing to engage with each other but have no will to change the situation, CBMs can simply indicate "we are doing something" and this may be better than nothing. Generally, some form of contact between parties is better than no contact at all, as isolation tends to increase a hardening of logic and distrust as well as the potential for escalation.

Nevertheless, CBMs are not magic bullets. Some indication that parties are willing to try to change the status quo and engage with the other side is useful to measure if negotiations, and CBMs to facilitate negotiations, are appropriate. If CBMs are poorly designed and mediated, they can be misused as a stalling or cover-up tactic, or lead to biased impacts. Keeping some simple guidelines in mind helps to minimize these unintended consequences and maximize the positive impact of CBMs on a conflict situation.

Chapter 4:

Implementation of peace agreements

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4.1 Introduction

Implementing intrastate peace agreements[1] might very well be an even greater challenge than negotiating them in the first place. Why is it so hard? And what can mediators do to improve the chances that proper implementation does take place? In this chapter, we focus on these two questions.

Non-implementation or inadequate implementation of a peace agreement can lead to renewed tensions and a resumption of fighting. A track record of poorly implemented peace agreements affects other peace processes as well. The increasing awareness of broken promises elsewhere makes negotiators weary of making real commitments before robust guarantees are put in place to ensure full implementation of what they may be willing to settle for.[2]

There are many reasons why intrastate peace agreements pose a particular challenge when it comes to implementation. These factors need to be taken into account in the design of the peace process right from the start. It is during the negotiation phase – and not post-accord – that mediators can make the most important contributions to the future implementation of agreements reached. By engaging the parties in exploring a variety of measures that address different aspects of the implementation challenge, mediators contribute to creating the best possible conditions for the full implementation of a peace agreement.

This chapter examines the various measures available to the mediator for this purpose, their potential and limitations, as well as the conditions that contribute to their effectiveness or failure. We also ask whether it is wise for mediators to take on a role with respect to the implementation of an accord they helped to bring about, and suggest that mediators can contribute to the improvement of conditions for peace implementation generally (Section 5).

To put all this in context, we start by looking briefly at the nature of today's conflicts and peace agreements (Section 2) and at the main recurrent reasons for and factors contributing to non-implementation of intrastate peace agreements (Section 3). In Section 4, we outline the international legal and institutional framework for dispute resolution.

4.2 The nature of today's conflicts and peace agreements

The overwhelming majority of armed conflicts worldwide in the past decades have been, and continue to be, *within* states (*intra*state) as opposed to *between* states (or *inter*state).[3] Most relate to the power to govern a state or a portion of that state. Many intrastate conflicts involve the government of a state and a group within that state. This can be a particular people, an indigenous people, a tribe, a minority or the population of a distinct region within the state (referred to from now on as "population group"). Other conflicts are fought over who wields power in the central government of the state, often pitting an opposition party or rebel movement against an incumbent determined not to relinquish or share the instruments of power. Both types of conflict often also concern access to or exploitation of natural or other lucrative economic resources.[4]

The underlying causes of these conflicts often involve the violation of human rights, including issues of linguistic, cultural or religious rights of certain groups of the population, the abuse of power by rulers, and questions of political representation, land rights and uneven distribution of resources.[5] **The peace agreements that mediators help to craft or facilitate must reflect the nature of the conflicts concerned.** Therefore, such agreements often entail access to or transfer of power, power-sharing arrangements, devolution of power to a particular community or communities, recognition of minority or indigenous rights to particular territories or resources (including land rights), or autonomy and other special status arrangements for a distinct portion of the population.

Peace agreements usually also involve the decommissioning of weapons, the demobilisation of armed units of the non-state actors[6] or their integration into the regular security forces of the state. They may also involve a reduction in the number or reform of a government's security forces or the disbandment of particular units. Agreements may redistribute entitlements to royalties with respect to the extraction of natural resources or other economic components. They may involve a renewed commitment to the territorial integrity and sovereignty of the existing state, create new obligations for the state, or restrict its authority in a given portion of its territory. In exceptional cases, peace agreements involve a procedure for the possible separation of a portion of a state's territory and the creation of a new and independent state.

Given the nature of today's armed conflicts, peace processes are often, if not typically, asymmetric, and peace agreements also tend to contain asymmetric elements. **Most peace agreements entail a certain loss of power by the incumbent state government,** some of its institutions (such as the military), political parties or leaders. This is usually more than the power the opposing party is expected to relinquish. In fact, the latter often gains power or other concessions under the terms of the agreement, in exchange for an end to armed defiance. The loss of power or privileges often entailed in the implementation of peace agreements is a disincentive for governments and their incumbents to fulfil their obligations.

Although non-state parties generally stand to gain from a political settlement or peace agreement, they too may be reluctant to implement some of the commitments made. Given the lack of trust between parties to a conflict even after an agreement is reached, the non-state party will feel very vulnerable and be left with no real leverage if it implements important features of the agreement, such as its disarmament, before the government side has fulfilled its part of the bargain.

Barbara Walter emphasises this vulnerability in her analysis of the reasons for the failure of negotiations to end civil wars.[7] The main reason for such failure, she argues, is that in circumstances where there is no credible enforcement authority or mechanism, parties are expected to demobilise, disarm, and disengage their military forces. They are, in her words, "asked to do what they consider unthinkable" since, once they comply, they will be left with no real means to press the other side to implement its commitments, nor to survive an attack.[8] This problem of vulnerability is at times reciprocal in civil war contexts where neither side holds the power instruments of the state. It applies particularly to the non-state actors in conflicts pitting them against the state, since the latter is rarely if ever required to disarm.

Although asymmetry alone cannot explain non-implementation, its existence and impact needs to be understood and kept in mind when considering and addressing the specific and recurring obstacles to implementation discussed below.

4.3 The main reasons for non-implementation

Implementation often needs to occur in circumstances of institutional fragility. Following an armed conflict, the institutional fabric of the state or of conflict-affected regions is typically fragile. Without proper (international) support, the government or local authorities may be unable to provide even basic elements of governance, justice, economic policy and social services for the population. Such a situation cannot easily be remedied quickly, and these conditions make implementation challenging. Additionally, parties may lack the capacity to implement adequately aspects of the peace agreement. These two factors should not be underestimated. They must be recognised and, where appropriate, addressed, and mediators have an important role to play in this regard.

- **Lack of political will**

Implementing a peace agreement requires sustained political will of a large number of players on both sides.

- On the government side, this means political will of: individuals as well as bodies and institutions at national and local levels; ruling and opposition parties, incumbent politicians, bureaucrats and army personnel. Many of these groups may have vested interests in maintaining the *status quo* or may be susceptible to the pressures of electoral politics and bureaucratic resistance.

- On the side of non-state actors or rebel movements, political will is required from political leaders and guerrilla leaders at the top of the organisation, as well as lower down in the political and military structure.

Changes of government or of regime can easily disrupt the implementation of a peace agreement. Pre-existing obstacles to the negotiation of an agreement include fear of being branded "weak" for giving in to "criminals" or "terrorists", rewarding unlawful violence, "betraying the nation" or capitulating. These obstacles can be strengthened during the implementation phase of a peace agreement, particularly during elections or once the government changes. Popular perceptions, whether correct or not, can be vital, especially to those who come to power or maintain it through elections. Also, elections may bring into power a party that was not involved in the negotiation of the peace agreement and/or that opposes its terms, as in Bangladesh in relation to the Chittagong Hill Tracts Accords (Box 1).[9] In the worst case, the continuation or resumption of armed conflict may be seen as beneficial to the political interests of one or more parties vying for power.

In some cases, the government party may never have had the will to implement an agreement in the first place. It may have decided to enter into an agreement to gain important concessions from the opposing group (such as the surrender of arms), or to satisfy a neighbour or powerful state elsewhere, without ever seriously intending to implement its side of the bargain. Alternatively, it may face pressure from external actors not to implement aspects of a peace agreement those actors object to.

Non-state parties are also liable to obstruct implementation and often face internal political problems similar to those on the state side. Within a movement and among possible competing factions, leaders may fear being perceived as selling out the cause they have fought for, for example. Those who compete for recognition or power may take the opportunity to increase their influence by taking a hard line against the implementation of a "suboptimal" agreement (see Box 1). Some guerrilla movements that have operated according to their own rules and financed their existence and operations by extorting contributions from the population, have difficulty mustering the will to abandon their practices, entering the official political process and conforming to the demands of existing government structures. In Nepal, for example, extortion by former Maoist rebel cadres continued to pose a serious problem long after the peace agreement signed in 2006.[10]

Among all parties, there may be **vested interests in a conflict's continuation or resumption as this may be perceived to serve political interests.** In some cases individuals within the armed forces or paramilitary groups may have developed an economic interest in the conflict, such as arms trade, drug trafficking, mineral extraction or logging. These activities may have funded their organisations (and enriched them personally), and cannot be protected without the capacity to use force. In many cases the perceived importance of the armed forces wanes when they are no longer engaged in a "war to protect the nation" and its values, and their budget may also be affected by the end of a conflict.

Non-state armed groups may want to maintain the capacity to defend themselves against dissident groups vying for power and legitimacy, as well as to limit their vulnerability to the state party. The perceived nobility of armed struggle and the identification of it with a specific cause can make giving up arms psychologically difficult for many members of such groups.

Paradoxically, the political will parties do have at the conclusion of a peace agreement may very well change as a result of the implementation process itself. **In the course of implementation, power relations between the parties change at each step of that process, prompting them to re-assess their relative strength, potentially affecting their commitment.**

Aside from the above factors, **implementation of any agreement will be resisted if it was arrived at under so much pressure or coercion that one or both parties are seriously dissatisfied with it.** An imposed "agreement" will be resisted by the aggrieved party, especially if it feels that the agreement perpetuates or legitimises an unjust situation. Moreover, even if the political leaders of all parties have reluctantly accepted its terms under pressure, the affected population(s) may continue to oppose them.

Lack of political will is not an abstract concept outside the mediator's purview. On the contrary, its practical manifestations need to be anticipated and recognised by mediators, and addressed with the parties as peace agreements are being negotiated. By working with the parties to address the various issues discussed in Section 5 of this chapter, the mediator will be able to identify problems of political will, as they surface throughout the process.

Mediators should be careful to distinguish between the absence of political will to implement and a lack of capacity to do so. Political leaders may find it easier to say "I do not want" than to admit "I cannot". An apparent lack of political will can therefore also disguise a lack of political ability or power.

- **Shortcomings in the terms of the agreement**

If an agreement is rushed and badly drafted, vague or ambiguous on important points, or incomplete, satisfactory implementation is harder. Parties may choose to be vague and ambiguous in the drafting of an agreement in order to make it more palatable for their constituents or political rivals or to leave some room for interpretations favourable to them. But lack of precision in a final agreement may well lead to difficulties in implementation, and mediators should help parties to draft and accept clear language.

In earlier stages of the negotiations, it may be tempting for the mediator not to resist the desire of the parties to maintain a certain ambiguity in the interest of reaching preliminary agreements or a ceasefire. Indeed, it is sometimes necessary to settle for the use of ambiguous language – thereby "covering up" known differences between the parties on certain issues – to overcome an obstacle to the continuation of the peace process. In such cases, it would be prudent for the mediator to help the parties to agree on a process to address such differences before the ambiguous language is agreed.

In addition, certain provisions in peace agreements can facilitate implementation while their absence can be considered shortcomings and sources of potential trouble in the implementation process. Examples are provisions regarding the procedures and mechanisms for the implementation itself, including verification and monitoring and effective dispute resolution. Other such provisions concern the transition to the new situation envisaged in the agreement, including processes for transfer or devolution of power and for the constitutional, legal and institutional changes that need to take place.

In Section 5, we return to all of the above in terms of what mediators can do to promote implementation.

Box 1
The Chittagong Hill Tracts (CHT) Accord (1997): problems leading to limited implementation

The 1997 Chittagong Hill Tracts (CHT) Accord was signed after 20 years of armed conflict in southeast Bangladesh. The process leading to the Accord illustrates several factors that together pose a formidable challenge to successful implementation.

On the indigenous movement's side, the Accord was negotiated without broad participation of the affected population or its civil society, making it easy for a new armed opposition to emerge right away. And it was the political party in power in government, rather than the state, that entered into an agreement with the indigenous peoples of the Chittagong Hill Tracts. The Accord was reached without consensus with the main opposition party in the national parliament, which, when it came to power soon after the Accord was signed, did not pursue its implementation.

The indigenous group handed its weapons to the government right after the peace agreement was signed, losing most of its leverage and seriously upsetting the balance of mutual vulnerability between the signatories. An important element of the agreement for the indigenous peoples was not written and not made public and could therefore be denied. The Accord did not provide for constitutional entrenchment or other guarantees. Several laws passed to implement the agreement, granting autonomous powers to regional and district councils, were declared unconstitutional by the High Court as violating the sanctity of the unitary state.[11] The composition of the implementation monitoring committee was weighted in favour of one of the parties, which made it predictably ineffective. The Accord did not include a timeline, nor an independent dispute resolution mechanism, leaving the parties without recourse in which they both had confidence.

Some 15 years after the conclusion of the Accord, many important provisions remain unfulfilled. These include the partial demilitarisation and relocation of army units, the rehabilitation of internally displaced persons, and the resettlement of Bengali plainspeople outside the CHT. In the words of the UN Special Rapporteur to the Permanent Forum on Indigenous Issues, Lars-Anders Baer:
[t]here is still a long way to go before the intention of the Accord, that is the establishment of a regional system of self-government and the preservation of the area as a "tribal inhabited region", is achieved… The lack of substantial progress is leading to an increased sense of frustration and disillusionment among the indigenous peoples of the region.[12]

4.4 The international legal and institutional framework for dispute resolution

Parties to intrastate peace agreements that seek recourse when such agreements are not implemented by another party are largely limited to domestic judicial and political processes, unless specific mechanisms are provided for in the peace agreement they have concluded. The domestic processes are rarely fair, since in many countries they are controlled by or biased in favour of the holders of government power.

Internationally, there is also uneven access to intergovernmental organisations and the tools they may provide specifically to ensure implementation of peace agreements. The international legal and institutional framework for dispute resolution was largely designed when the great majority of world conflicts were between states. Despite significant recent innovations, the international system has not fully kept pace with evolving needs in this respect. While there are several international judicial mechanisms for the settlement of disputes, including those concerning the implementation or interpretation of peace agreements, among states, these mechanisms are not designed for the settlement of intrastate disputes.[13]

The lack of internationally based legal recourse for both state and non-state parties to intrastate agreements underscores the need for such parties to agree credible guarantees and robust forms of recourse to ensure implementation of the agreements. Ideally, this should involve the UN and other international or regional organisations. Appropriate institutional and political backing is crucial to the effectiveness of such mechanisms, as is the choice of individuals heading them. It is conceivable, for example, that the implementation problems highlighted in Box 2 regarding the Aceh peace agreement would have been addressed differently and with more resolve by a different institutional guarantor or head of the implementation mechanism.

One of the consequences of the scarcity of international mechanisms in which both state and non-state parties have confidence, and which they can invoke when an implementation dispute arises, is that non-state parties are very reluctant to enter into an agreement that does not provide guarantees for implementation, especially if it involves the demobilisation of their armed forces. Once it appears that implementation is not being faithfully pursued, a return to the use of force may be perceived as the only or most effective alternative by an aggrieved party. Without non-partisan, reliable and trusted mechanisms and institutions to address disputes linked to the peace agreement and its implementation, a fragile peace can easily be put in jeopardy.

Despite the nature and constraints of the international legal and institutional framework for dispute resolution, international organisations like the UN, the Organization for Security and Co-operation in Europe (OSCE) and AU increasingly *do* take on third-party roles including the overseeing of agreement implementation in intrastate conflict situations. In some of those cases, non-state parties have also been given exceptional access to the UN system or to relevant regional organisations, also in the implementation phase. This was the case, for example following conflicts in Mozambique and East Timor.

Box 2
The Aceh peace agreement (2005): mixed success in implementation

The Aceh peace agreement implementation process was politically endorsed by the international community and generously provided with resources by the EU, ASEAN, the World Bank, the International Organization of Migration and a number of individual countries. A well-financed international monitoring body (the Aceh Monitoring Mission, AMM) was put in place with a dispute resolution mandate including powers of adjudication. Much effort was thus put into ensuring that the Helsinki peace agreement (the MOU) would be properly implemented and that armed conflict would not resume.

Despite this international attention, effort and dedication of resources, the AMM's role in monitoring and promoting full implementation of the agreement, while successful in matters of security, demobilisation and re-deployment of armed forces, fell short when it came to the MOU's provisions on human rights and justice and on ensuring the implementation of substantive provisions of the political agreement on autonomy.

The Indonesian parliament belatedly passed a law on autonomy (after the decommissioning of the armed forces of the non-state party, GAM, had been completed), and in the process significantly watered down key provisions of the MOU regarding the self-governance of Aceh. The AMM did not act, despite GAM protests, citing the inappropriateness of interfering in the constitutional processes of a state. GAM was left with no alternative but to try to re-negotiate some of these important provisions. Left with little leverage at this point, it was effectively constrained to accept the parliament's actions.

There are other examples of international involvement in implementation.

- The UN, through its Political Office in Bougainville, co-chaired and facilitated the peace talks that led to the 2001 Bougainville Peace Agreement and played an ongoing role in monitoring the implementation of that agreement.

- The OSCE facilitated talks between the Russian government and Chechnya in Grozny in 1995/96, after which it also monitored aspects of the agreement's implementation, in particular the election that followed.

- The UN and the Arab League jointly appointed Kofi Annan to mediate the conflict in Syria between the government and the popular opposition in February 2012. Annan emphasised the importance of ensuring the implementation of the Six Point Peace Plan he brokered, and proposed tailor-made mechanisms to monitor and ensure compliance by the parties.[14]

Subsequent events have painfully demonstrated the difficulties of securing implementation of intrastate agreements of this kind, even when put in place by leading intergovernmental organisations and endorsed by a major part of the international community. In other cases where the international community has taken an active role in the mediation of intrastate conflicts, such as those in Bosnia, Macedonia, and Sudan (resulting in this case in the North–South Comprehensive Peace Agreement), special international bodies were created to oversee or ensure proper implementation, with varying degrees of success.

So, even though the international legal system is not set up well to deal with intrastate disputes, this does not prevent international organisations from playing an increasingly active role in this field. This is encouraging and may lead to a formalisation of this practice serving both state and non-state parties equally. Section 5 next looks at what mediators can do, and what is already happening in this regard.

4.5 How can mediators contribute to implementation?

Mediators can play a role in the implementation process, and there are recent examples of continuing roles for mediators being provided for by the parties to a peace process. Martti Ahtisaari, the Aceh peace agreement mediator, was assigned the role of final arbiter in disputes that could not be resolved by the Head of the EU-led Monitoring Mission.[15] President Blaise Compaoré of Burkina Faso has headed the supervisory committees overseeing the Ouagadougou Côte d'Ivoire peace agreement which he brokered in 2007.[16]

However, there is an important debate about the wisdom of mediators supervising or otherwise monitoring peace agreements they helped to broker. The limited success of both of the above examples supports the need for caution in this regard.[17] It has also been suggested that Norway's role in monitoring the ceasefire agreement between the Sri Lankan government and the LTTE was hampered by its mediation role, and vice-versa.[18] **The mediator's most important contributions to securing good implementation are made before the signing of a peace agreement, in ensuring the creation of the proper conditions for implementation.**

Common sense indicates that an agreement that addresses the root causes of the conflict as well as the interests of the parties and other major stakeholders, in line with the new realities on the ground, provides the best chance of being adequately implemented. Parties to such agreements are most likely to muster the political will to live up to their commitments and to find ways to overcome the kinds of obstacles mentioned above. Helping parties to achieve or at least approach this kind of agreement is therefore the most important contribution mediators can make to implementation.

By the same logic, persuading parties not to conclude agreements that do not fulfil these conditions, is an equally important contribution mediators can make. Senior UN official and mediator Francesc Vendrell saw it as his task to prevent the Portuguese and Indonesian governments from signing such an agreement over East Timor prior to the window of opportunity to reach a fair agreement following the fall of Suharto. As Vendrell stated:

Bearing the case of West Papua in mind, my main effort for most of the time of my involvement in the East Timor case was to prevent a bad settlement, since the conditions were not there to achieve a fair settlement in accordance with the UN Charter.[19]

However, much can go wrong in the implementation of even a good agreement, and measures should be taken to help ensure that such agreements have the best chance of being adequately implemented. Below, in the following four subsections, we highlight specific measures that mediators can actively help to put in place. By bringing these to the table for parties to consider and discuss throughout the negotiations, including early on, multiple opportunities are created to address the degree of political will as well as the capacity of parties to implement possible scenarios before them. This helps mediators and parties alike to identify and address the obstacles to future implementation.

A. DESIGNING THE PEACE PROCESS WITH IMPLEMENTATION IN MIND

Process design is often the prerogative of mediators and the latter are therefore well placed to help create a process that encourages parties to take steps with implementation in mind.[20] Three important ways in which mediators can promote implementation from the start of the negotiations are:

- Ensuring broad participation at the right time in the process;
- Structuring confidence-building elements into the process, including mini-agreements along the way;
- Working out the timing of the implementation of the respective commitments with a view to maintaining a certain balance of leverage.

Parties are generally not primarily concerned to ensure that each step they take contributes constructively to the peace process, as mediators are trained to do. They are often fully occupied with handling very immediate situations, such as solving crises on the ground, dealing with the press, protecting their image, maintaining power and securing maximum gain on the agenda points before them. Indeed, vigilance with respect to the process is, above all, the mediator's role.

• Ensuring broad ownership of the process

The mediator can seek to design and help establish ways by which a broad section of the population can participate and feel ownership of the process, including during implementation. This is at times difficult to accomplish, since political leaders engaged in the negotiations are often wary of losing tight control over the process as well as the substance of the talks. The mediators themselves may have to overcome obstacles, such as the existence of a climate of fear among the people, to express ideas that may be divergent from the "official line" of a party to the conflict.

Broad participation may not be considered helpful in all stages of a peace process. In Aceh, for example, it seems to have been very important to build on the momentum for peace created by the 2004 tsunami and to come to an agreement quickly. A process including broad participation would not have been possible in such a timeframe. Nevertheless, a process as in Aceh makes good communication and participation following the agreement even more important. The timing and means of including sections of the population in the process must therefore be carefully considered.

Ways to involve the population include creating a place in the process for civil society organisations, including women's organisations, local community bodies, religious institutions and political parties, as well as finding ways to communicate and deal with spoilers.[21] The Bougainville peace process in particular provides a very good example of the benefits of broad involvement in peace negotiations as well as some of the practical problems that need to be addressed to make this possible.[22]

• Including confidence-building steps in the process

Designing and guiding the process to help the parties develop confidence in their ability to reach agreement, even on small matters, as well as in each

other's ability to fulfil commitments and to "deliver" on these agreements, is an important contribution the mediator can make. The impact of even small steps of this kind can be significant in developing a degree of trust, optimism and willingness to co-operate in the peace process. This can have positive ripple effects in the broader population as well, and can inspire confidence internationally and among potential funders of the process.

- **Phasing implementation**

Mediators should pay special attention to how the implementation of the respective provisions of an agreement affects the "power balance" between the parties and their relative vulnerability. This can translate into a phased implementation process requiring reciprocal steps being taken by the parties in accordance with an agreed timeline and in a manner designed to minimise upset in the delicate balance of leverage between them. Thus, for example, de-mobilisation of the non-state party's armed forces and decommissioning of its weapons would take place in a phased manner, as institutional or constitutional reform and other commitments made by the state party are fulfilled. Monitoring and verification mechanisms are important to enable such phased implementation.

- **Anticipating post-agreement fragility**

During the negotiations, mediators should think ahead to give particular attention to the period immediately following the agreement. A mediation process can end rather abruptly, before new processes for communication and dispute resolution, for example, are established. If this happens, the vacuum that may develop can be dangerous, especially when violent incidents occur.

B. ADDRESSING ENTRENCHMENT, POWER-SHARING AND DISPUTE RESOLUTION

Apart from designing the peace process with a view to the issues that might arise during implementation, mediators are also well placed to insist that the agreement itself includes a plan for dealing with those issues.

- **Entrenchment and other guarantees**

Entrenchment helps to assure that an agreement cannot (easily) be changed unilaterally. Aspects of agreements, for example, can be entrenched by incorporating them into the constitution of the state in question. This is usually done through one or more constitutional amendments. Entrenchment in the constitution creates confidence because constitutions are the highest law of a country and generally cannot be changed easily. Usually, a qualified majority of the parliament or other legislative body is required to change the constitution.

Where a peace agreement provides for special status (autonomy or otherwise) of a part of the state, **double entrenchment** ensures that no change can be made to it without the formal legislative action of both the national parliament (in accordance with the requirements for constitutional amendments) and the autonomous legislature.

Working with the parties on ways to entrench all or parts of the agreement is an important contribution the mediator can make to ensure better implementation. Parties should be fully aware of the importance and benefits of entrenchment – and of the consequences of not providing for adequate entrenchment as well as what it involves. Every country's state structure and constitution is different and so entrenchment may take different forms. The mediator will need to understand the constitution of the country in question and might do well to engage constitutional expertise to assist in this respect. The parties could also be advised to seek legal help in this regard and the mediator could facilitate working groups involving both parties and advisers to work on this issue.

Each party may have its own reasons for resisting entrenchment. A government may want to leave the issue to subsequent discussion in parliament. The non-state actor may want distance from a constitution the application of which it has opposed as part of its armed struggle, for example. Yet the timing of the entrenchment is important, as post-agreement enthusiasm to implement may quickly wane. **Agreeing on ways to entrench important parts of an agreement is not "a detail to be worked out by the lawyers later".** Discussing forms of entrenchment with the parties early on in the process facilitates the early surfacing of poor implementation. It may also help to address some of the principal reasons for poor implementation – lack of political will and lack of capacity. In the latter case, governments may, for example, feel they do not have the required majority in parliament for a constitutional amendment, and parties may need to consider other forms of entrenchment and guarantee.

A tool that mediators may use in their discussions with the parties is analysing the workings and effectiveness of a variety of forms of entrenchment in place in different parts of the world. When it comes to entrenching various forms of autonomy and other special status arrangements for a part of the population in a state, a number of experiences may be useful. Zanzibar's autonomy, for example, is firmly constitutionally entrenched in ways that make it impossible for the Tanzanian parliament to modify its status without action by the Zanzibar legislature as well, although election politics have for a time undermined its real autonomy.[23]

A similarly robust entrenchment of the Bougainville autonomy is provided for in the 2001 Bougainville peace accord (Box 3). The provisions of the 1986 Mizoram peace accord establishing the statehood of this region within India were entrenched in the Constitution of India, while other provisions, dealing with matters of particular importance to Mizo identity and way of life, were doubly entrenched.[24] Crimea's status is expressly entrenched in the Ukrainian constitution, but is not strongly protected from constitutional changes that can be enacted by the Ukrainian parliament.[25] The same is true for the special status arrangement of Gagauzia in Moldova.[26]

At the other end of the spectrum are the autonomy arrangements of Aceh, Scotland and Greenland, for example, that are solely embedded in national legislation, and not expressly in any constitutional provisions. The longevity of such arrangements is dependent on the political maturity and good will of political leaders or on institutional and political processes that mitigate against changing them.

- **Creating workable institutions and processes to implement power-sharing, special status arrangements and constitutional reform**

Agreements that involve power-sharing, constitutional reform or the creation of regions with special status all require processes and institutions for their implementation. Mediators can play a role in ensuring that peace agreements do not end up being only "paper agreements" by working with the parties to transform their intentions into concrete, workable and implementable agreements. They may wish to involve experts to design constitutional reform and legislative processes that ensure the affected population's ownership of the outcome and therefore provide the reformed state, its component parts and institutions with renewed legitimacy.[27]

A good example of an agreement that focuses on the creation of institutions and processes to give shape to the substance of the new arrangements is the Northern Ireland 1998 Good Friday Agreement. It provides the means for Northern Ireland to function independently of the British government in some areas, together with it in others, and together with the government of the Republic of Ireland in yet other areas. The various cross-border bodies and the devolved Northern Irish government provide the institutional avenues for the implementation of the agreement.

Box 3

Bougainville Agreement (2001): an inclusive process supports implementation

The success of the Bougainville peace process and of the implementation of the 2001 Bougainville Peace Agreement is at least partly attributable to the inclusiveness of the process. On the Papua New Guinea (PNG) government side, efforts were made to develop a bipartisan approach to the negotiations by setting up a National Committee on Bougainville including both government ministers and opposition MPs. On the Bougainvillean side, the elected unofficial Bougainville People's Congress, the Leitana Council of Elders and elected Bougainvillean MPs worked with the Bougainville Revolutionary Army (BRA) and the Bougainville Resistance Forces (BRF) to develop positions and bring them to the negotiations. This was achieved after lengthy meetings at community level to develop consensus among community organisations and the population as the process progressed. Anthony Regan, who advised the Bougainville negotiation team recalls:

A key feature established with the first negotiations and continued thereafter was inclusion in BRA/BRF representation in the negotiations of local leadership of the community-based fighting units. This meant large numbers of people attending – almost 100 Bougainvilleans went to the first Burnham talks. New Zealand and Australia at times attempted to limit numbers to reduce costs and logistical pressures, but were persuaded by the Bougainville leaders that in Bougainville's political and cultural context inclusivity was vital.[28]

Convincing parties of the importance of entrenchment also contributed to the success of the process and to the agreement's implementation. Among Bougainvillean leaders, who were advised in this respect by highly qualified constitutional lawyers, the possibility of reaching a compromise on a package consisting of a large measure of autonomy and a deferred referendum became conceivable only in combination with the prospect of such arrangements being firmly entrenched in the country's constitution. PNG had a reasonably strong record of adhering to the constitution in part because of respect for judicial rulings on constitutional issues.

The Bougainvilleans proceeded with the talks only on the understanding that special status arrangements would be constitutionalised to be protected from unilateral change. This was necessary to provide sufficient confidence in PNG's fulfilment of its commitments. So PNG agreed to the Bougainville government having power to veto amendments to constitutional provisions giving effect to the peace agreement between PNG and Bougainville.

- **Monitoring and verification**

It is now common practice to include in an accord a provision on how the implementation of the various commitments will be monitored and verified, and mediators and parties alike have access to ample case material to learn from. The monitoring and verification tasks can be entrusted to different kinds of actors, both domestic and international, governmental and non-governmental. They can be undertaken by the parties themselves, by third parties or by combined bodies established for that purpose.[29]

The mediator's role is to facilitate agreement on the most effective form of monitoring and verification for a particular situation. Activities to be monitored may range from disarmament, decommissioning and re-deployment to resettlement and rehabilitation of refugees or displaced persons, and from constitutional and legislative enactments to power transitions and election processes. Mediators can help parties make well-considered and appropriate choices with respect to the mechanisms to be set up as well as with respect to the mandates, composition and financing of the bodies or individuals to be engaged.

Given the lack of trust between parties, it is essential that the monitoring entity be credible, independent and have the sole authority to determine and report on violations of the peace agreement and work in a transparent manner. A number of peace processes are monitored by bodies made up of equal numbers of representatives of each party, and if such a mechanism is chosen, it is the chairperson of such a body who must be endowed with independent authority. The tendency is for the government party to intrastate agreements to propose that it appoints the chairperson or at least that the latter be a senior, possibly retired, government official. This type of arrangement invariably leads to problems and should be resisted by the mediator.

Experiences in Aceh have moreover demonstrated the importance of the political clout of monitors. In Aceh this was provided by the EU, which appointed the head of the monitoring body and politically and financially backed the mechanism.This is difficult to achieve where the monitoring mechanism is entirely domestic, so a mediator may need to propose the inclusion in the monitoring mechanism of creative links to external actors with power.

- **Dispute resolution**

Working with the parties on including in the agreement mechanisms to deal with disputes regarding the interpretation of the agreement (language or intent) or arising out of the implementation or non-implementation of its provisions is of course a priority mediator's task. This involves jointly exploring the relative advantages and practicalities of a range of both domestic and non-domestic options available to parties. The agreement can for example include a clause that provides for a process of negotiations, for mediation by an acceptable third party, for arbitration, for the submission of disputes to a constitutional or supreme judicial court for adjudication, or for a combination of these.

Most mediators should be familiar with these avenues, including their application in recent peace processes and agreements. It is especially important to consider the inclusion of adjudication in dispute-resolution mechanisms. This can be useful where specific issues are left in the peace agreement for resolution by arbitration or other adjudicatory process (as was successfully done in the North–South Sudan Comprehensive Peace Agreement with respect to the border demarcation in the Abyei region)[30]. Arbitration or other forms of adjudication can also be integrated in layered dispute-resolution mechanisms that provide for mediated dialogue and negotiation as a first instance and adjudication as a last resort, as was done in the Aceh peace agreement.

In both instances, the quasi-international nature of the mechanisms used contributed to their potential efficacy. Despite the shortcomings in the application of the mechanism in the Aceh implementation process, these mechanisms should be studied and improved upon by mediators. The precedent created by the Permanent Court of Arbitration's administration of the Abyei arbitration in 2009 is of major importance in this respect (see Box 4). Other international judicial tribunals, such as the ECOWAS Court, which can hear disputes between state and non-state parties, should similarly be explored.[31]

As the Aceh, Côte d'Ivoire and Sri Lanka accords – and their varying degrees of success – demonstrate, mediators of peace processes can also themselves play a role in the resolution of disputes arising from the implementation of an accord. However, mediators need to be careful about taking on such a role.

C. OVERCOMING THE CHALLENGES OF FUNDING IMPLEMENTATION

Implementing the commitments set out in peace agreements requires substantial resources. In most cases, these are not available equally to all parties. In some cases, for example after a protracted conflict, such resources may not be available domestically at all. Securing the necessary financial means is often politically sensitive for all involved. External as well as internal funds may come with strings attached and can be withheld for political and other reasons that may have little to do with performance or needs in regard to implementation of the peace accord.

Donors are also frequently constrained or selective in which aspects of implementation they are willing to finance. In addition, non-state actors may be wary of being dependent on central government officials for disbursements of funds enabling them to implement their commitments. Central governments meanwhile may object to the provision of external funding to non-state actors within their borders.

These issues can be major threats to agreement and implementation. The mediator is well placed to foster understanding of the sensitivities and complexities involved, and to facilitate agreement on acceptable sources of financing among the parties. Despite recognition of the critical importance of this issue, relatively little has been written on the subject.[32] Mediators and parties alike would be well served by making this the focus of expert meetings and seminars drawing from diverse experiences from the field.

- **Establishing a "group of friends" of the peace process**

Experience has shown that the establishment of a "group of friends" and similar mechanisms can be helpful in promoting continued interest in a peace process beyond the conclusion of the agreement. In some cases, this may also be a way of providing the financial and other resources for aspects of the implementation of the agreement, and for monitoring and verifying the process.

A "group of friends" may consist of governments and non-governmental organisations as well as of individuals who are trusted by the parties, who may have a positive influence on them and the ability to help mobilize the international community and its resources for the process. Much is dependent on the group's composition and the individuals involved. Such a group may be connected to the UN (such as the "friends of the Secretary-General" established in the El Salvador, Guatemala, Haiti, Georgia, Western Sahara, and East Timor conflict situations)[33] or not (as in the case of the International Contact Group for the Mindanao peace process, in the Philippines).

D. ENGAGING DECISION-MAKERS AND EXPERTISE TO SUPPORT IMPLEMENTATION

Mediators are well placed to engage experts of relevance to peacemaking and peacebuilding, such as constitutional lawyers, military specialists, statesmen/women, extraction industry specialists and boundary delimitation specialists. They can effectively communicate and work with professionals because they understand the needs, aspirations, concerns and fears of negotiators and their constituencies, while not themselves being party to the conflict. Besides engaging expertise in the service of a particular peace process, mediators can also mobilise expertise to help create better conditions for peacemaking and implementation in general.

Experienced mediators, who have been intimately involved in a number of peace processes, are likely to notice that certain obstacles during the negotiations and the implementation of agreements occur regularly. And they develop an understanding for the conditions that need to be in place for such processes to be successful. Mediators are therefore well positioned to discuss these obstacles and possible solutions in a larger setting, with influential groups and individuals as well as with experts in diverse fields. This can help to promote an appreciation for the need to develop new ideas, attitudes and avenues that facilitate parties' implementation of peace agreements. This in turn can sow the seeds for initiatives that bring the international legal and political order more in line with the needs of today's intrastate conflict resolution.

One example of such an initiative is Kreddha's engagement of experts in international law, arbitration and conflict resolution to explore the use of (quasi-) international adjudication mechanisms as a recourse for parties to intrastate peace accords (Box 4). Such an initiative created the conditions for the realisation of the first arbitration of its kind by the Permanent Court of Arbitration (PCA) in the Hague. This added an international element to dispute-resolution options for parties and mediators to consider, and, it is hoped, also to expand and improve upon.

Box 4
The Abyei Arbitration (2008): successfully resolving boundary disputes

Recognising the importance of credible dispute resolution mechanisms, including adjudicatory ones, for parties to intrastate peace agreements, Kreddha (the International Peace Council for States, Peoples and Minorities) has hosted a number of expert meetings on this issue. These brought together mediators, advisers to parties in conflict, international arbitrators, individuals with current or past senior positions at the UN and the PCA.

It emerged from these meetings that the availability of international or quasi-international arbitration, if properly conceived, could be used to resolve certain disputes and would also serve to encourage parties to reach negotiated settlements in the knowledge that the other party could go to arbitration as a last resort. A particularly promising outcome was provided by a broad reading of the PCA rules of procedure, which would allow the Court to admit judiciable disputes with respect to implementation of agreements between states and non-state entities. Months after the series of expert meetings, the first such arbitration proceedings were initiated after being admitted by the PCA. This came to be known as the Abyei Arbitration as it concerned Sudan's politically charged delimitation of the country's oil-rich Abyei region. The 2005 Comprehensive Peace Agreement between Sudan's government and the Sudan People's Liberation Movement/Army (SPLM/A) had left this sensitive issue to be resolved by an expert boundaries commission. When the government of Sudan refused to accept the commission's findings, claiming the commission had exceeded its mandate, and this dispute was not resolved by mediated negotiations, the parties once again stood on the verge of armed conflict. This was prevented, in July 2008, when the parties agreed to submit the new dispute to arbitration under the PCA rules of procedure that had been discussed in the Kreddha expert meetings.

Significantly, the SPLM/A was advised and represented in the proceedings by three of the participants at those meetings. The arbitration was successful in resolving the specific border dispute put before it. Indeed, both parties accepted the arbitral decision and implemented it. Other contentious issues led to renewed armed conflict between the same parties after the independence of South Sudan, but the particular issue resolved by arbitration was not among them.

Apparently building on the success of the first arbitration, the African Union proposed a roadmap on 26 April 2012 for resolving the later conflict, which heavily emphasised arbitration of remaining boundary disputes. Thus, despite the resumption of armed conflict by the Khartoum government, the PCA arbitration provides a powerful precedent that should encourage parties to include quasi-international arbitration clauses in peace agreements.[34]

4.6 Conclusion

Mediators have an important role to play in creating the conditions for successful implementation of peace agreements. Measures available for this purpose need to be introduced for discussion and decision by the parties as an integral part of the negotiation process. In addition, mediators can help parties anticipate and address difficulties they may encounter in implementing commitments they need to make, as well as engaging the international community should the latter's help be needed and agreed to.

Engaging with the parties on measures that make the implementation of commitments they are negotiating concrete and enforceable will also facilitate the early surfacing of lack of political will – early enough for it to be addressed within the peace process. The importance of this should not be underestimated considering that lack of political will is an important reason why intrastate peace agreements are poorly implemented.

Mediators are also well placed to promote appreciation of the need for initiatives that bring the international legal and political order more in line with the needs of today's intrastate conflict resolution. Lastly, mediators can play a third-party role in the implementation phase of a peace agreement, although the wisdom of mediators supervising, monitoring or acting as arbiters with respect to agreements they helped broker should be considered very carefully. In sum, there is ample opportunity for mediators to contribute meaningfully to the attainment of the peace envisaged by the agreements they help to bring about.

Chapter 5:

Tipping the balance? Sanctions, incentives and peace processes

Catherine Barnes

5.1 Introduction

In the face of the profound challenges presented by armed conflict, foreign governments and multilateral organisations can respond in numerous ways. Among these are: offering international **mediation** – the effort to support the parties to the conflict and others in the conflict-affected society to reach a negotiated settlement; and the application of **sanctions** and the use of **incentives** in the attempt to influence decision-makers' behaviour in conflict. This chapter explores the interface between mediation and sanctions and incentives, with a focus on how they can influence conflicting parties' engagement in a peace process.

The chapter begins by reviewing common sanctions instruments, with a particular focus on developments in the African Union, and assessing the use of targeted sanctions in response to armed conflicts. It then surveys how external actors have tried to create incentives for parties to reach and implement peace agreements. It considers how sanctions and incentives can be used within an overall peace-process support strategy, highlighting both opportunities and risks. The objective of this chapter is to help raise awareness of the use of sanctions and incentives and their complex potential effects on the prospects of peace negotiations so that the AU mediators can better factor these dynamics into their strategies.

5.2 International sanctions: types, trends and institutional arrangements

Sanctions are a key policy measure in response to the violations of international law and threats to peace and security. Under Chapter VII of the UN Charter, the Security Council can take enforcement measures to maintain or restore international peace and security. These measures can range from economic and other sanctions to international military action. Sanctions can also be applied **unilaterally** by individual states and **multilaterally** by other regional bodies, such as the European Union or the African Union, or by sub-regional groupings such as the various Regional Economic Communities (RECs) in Africa.

The range of potential sanctioning bodies can amplify the challenge of developing a coherent approach. Each organisation has distinctive considerations and decision-making processes so it is challenging to develop a timely and co-ordinated response. The AU has, however, sought to develop sanctions regimes in close consultation with its own Member States and especially the RECs as well as with the UN.[1] The modalities for this co-operation continue to evolve.[2]

- **African Union and sanctions**

Under Article 23 of the Constitutive Act, the AU Assembly can impose limited and targeted sanctions on Member States who do not comply with its decisions and policies, consistent with the principles guiding the Union.[3] While the AU Assembly retains the highest authority, it has delegated power to the Peace and Security Council (PSC) to impose sanctions, as well as being the primary body for the AU's response to peace and security concerns. The PSC and the Commission Chair have the responsibility to harmonise and co-ordinate the activities of the RECs on matters related to peace, security and stability. A special envoy is typically designated to facilitate this co-operation as well as to liaise with the UN Secretariat and other relevant bodies.[4] The envoy typically assesses the overall situation, makes recommendations and seeks ways to address the situation diplomatically. In 2009, the PSC decided to develop a sanctions committee mechanism, which may greatly strengthen monitoring capacities.[5]

In practice, the PSC's response to unconstitutional changes of government has frequently included targeted sanctions. It has less often used sanctions in response to armed conflict. The AU's typical response to unconstitutional changes of government progresses rapidly from condemnation to suspending violators from all AU meetings and institutions, followed by efforts at dialogue typically accompanied by sanctions.[6] Because both sanctions and dialogue are used together, there is value in harmonising both approaches.

However, there are concerns that the AU has limited technical capacity to monitor and enforce targeted sanctions.[7] This problem is exacerbated by the institutional weaknesses in many Member States, preventing them from fully implementing sanctions imposed by the AU or UN. Therefore the effectiveness of the AU's sanctions is especially reliant on stigmatising their target, while the AU simultaneously seeks to change the target's behaviour through diplomacy, dialogue and mediation.[8]

- **Types of sanctions regimes**

Most commonly, sanctions aim to compel targets to change their behaviour.[9] While Chapter VII sanctions may aim to enforce compliance with Security Council resolutions, they often have the primary effect of signalling condemnation of the target's violation of norms. Depending on the effectiveness of the measures, sanctions may also practically constrain the target's capacity to achieve their objectives.[10]

International sanctions can take many forms. Until the early 1990s, the most sanctions regimes were based comprehensive economic and trade sanctions, frequently targeting a country as a whole. The logic was to exert overwhelming pressure short of the application of military force through isolation and cutting off access to resources. It is now increasingly rare for multilateral organisations to impose comprehensive sanctions regimes. The legitimacy of these regimes eroded as concern mounted at their humanitarian consequences and their negative impact on the economy of third countries. Since the 1990s, the trend has been toward a more refined approach to the design, application and implementation of targeted sanctions.[11] Targeted sanctions include a number of different measures, as detailed below.

<u>Individual sanctions</u>

One common approach is to sanction individuals (such as the leader of an armed group or a head of state) or categories of individuals (such as members of the Taliban). Typical measures include bans on international travel and freezing the assets and blocking the financial transactions of listed individuals or entities.[12] Additional measures to target individuals involve criminal proceedings, including indictment by the International Criminal Court, or being named on the list of a proscribed terrorist organisation.

Wallensteen and Grusell[13] explore the policy outcomes of individual sanctions. In cases where the goal is to stop a war, to change a regime or to change basic security policies, individual sanctions are successful only if they cause the target to advocate for policy change that changes the behaviour of the govern-

ment or other entity.[14] Their detailed study of eight UN "non-terrorist" individual sanctions regimes from 2000 to 2009 found that individual compliance was less than 20 percent. These sanctions appear to have had either marginal or no effect on changing their target's political behaviour. Sanctions may even have hardened the position of those targeted, leading them to become more loyal to their group.

There are also challenges in choosing who to sanction and how, as seen in Côte d'Ivoire (Box 1). For individual sanctions to be more effective in changing government or organisational policies on conflict and security, they should more directly target political decision-makers on one hand and the "traders" who do the deals (such as selling commodities or procuring weapons) on the other.

Box 1
Individual sanctions in Côte d'Ivoire: who to target and how?

In November 2004, the UN Security Council imposed sanctions in response to the situation in Côte d'Ivoire with the aim of supporting implementation of the peace agreement. Among other measures, the Council imposed sanctions on three individuals.[15] The Council apparently hoped that by targeting fewer individuals but with explicit criteria, they could increase the likelihood of effective enforcement, send a clear message and have the credible threat of adding more individuals to the list in the future. Yet many questioned the strategic rationale of choosing individuals who were politically peripheral and not responsible for policy-making. According to Wallensteen and Grusell, leading figures had initially viewed the threat of sanctions as dangerous.Yet when only the "small fish" were targeted, the sanctions lost their credibility. This is furthermore likely to have given the "bigger fish" ample time to move their assets beyond reach.[16]

Sanctioning bodies could increase the effectiveness of individual sanctions by considering the following three questions:

1. What is the primary goal of the sanctions in the specific case, and are they likely to help achieve that goal?
2. Are the sanctions likely to persuade the target? (This can include questions about whether it is possible to enforce the sanctions effectively and whether they are specific enough to the desired change.)
3. Is the targeted individual sufficiently well placed to influence changes in the problematic behaviour/policy or to impede the group's access to resources such as weapons or financing?

Mediators may play a role in advising sanctioning bodies on the likely answers to these questions.

Arms embargoes

Another especially relevant type of sanction in response to armed conflict is embargoes on arms supply, training, military co-operation and other support to one or more "sides" in conflict.[17] Despite their great potential to alter the dynamics of a conflict, the effectiveness of arms embargoes in cutting off supplies to conflict parties has been mixed. Suppliers frequently violate international arms embargoes and the violators are rarely prosecuted.[18]

A study[19] of 27 mandatory UN arms embargoes found correlation between the imposition of a UN arms embargo and improved target behaviour in only one quarter of cases. Effectiveness seems to improve when there is also a UN peacekeeping mission with the mandate to monitor and enforce the embargo. The other major factor is the degree of political will and interest in enforcing the embargo among both the permanent five UN Security Council members and states neighbouring embargoed targets. In a number of cases, neighbouring states – particularly in Africa and the Middle East – seemed to have ignored their commitments to a UN arms embargo when it contradicted their own interests, thus greatly weakening the embargo.

Sanctions on conflict commodities

A complementary sanctions measure is to constrict the target's access to legal markets for "conflict commodities" like diamonds, timber, oil and other minerals. The strategic objective of these sanctions is to cut off the parties' access to the financial resources that may be motivating them to fight and/or are necessary to finance their war effort. As such, these sanctions aim to address a key driver of conflict. Notable examples include the sanctions and public awareness campaigns concerning trade in rough diamonds from Angola, Liberia and Sierra Leone that funded arms and related material fuelling armed conflict.[20] Generating the political will and technical capacities to enforce arms and commodity embargoes effectively remains challenging. Experience from Angola and Liberia suggests was to strengthen these sanctions regimes (Box 2, Annex 1).

Other sanctioning actions

There are numerous political and social measures that have the effect of sanctioning targets but are not legally codified sanctions regimes. For example, state-based actors can suspend official visits, expel diplomats or sever diplomatic relations. Donors can suspend aid or redirect it to bypass a targeted authority, for example by channelling it through non-governmental organisations. Civil society organisations and movements can declare boycotts, including for sports and cultural events, as in response to the apartheid regime in South Africa.

As highlighted below, these more subtle measures have the potential to be surprisingly effective in support of peace processes. Their effectiveness depends both on the importance of the measure to the target and on the importance of the target's relationship with the sanctioner. For example, if a traditionally close and powerful ally withdraws diplomatic support , this is likely to be far more significant than the same action by a distant country of little strategic significance.

Problematic implementation and enforcement

Despite being a crucial strategy for promoting international rule of law, sanctions regimes are challenging to enforce. In particular, they are notoriously "leaky". If a multilateral organisation agrees to comply with sanctions, for example, there is no guarantee that all member states will uphold them. Even if member states also comply, criminal networks are usually able to circumvent most restrictions. Additional problems arise from technical shortcomings in the design, application and monitoring of sanctions regimes. On the positive side, the UN has made significant improvements over the past decade to develop more precise and targeted resolutions. Monitoring has greatly improved through "panels of experts" to support UN sanctions committees.[21]

Box 2

Angola: innovations in sanctions enforcement [22]

The war in Angola was one of Africa's most protracted armed conflicts, with the war of liberation against Portugal evolving into a civil war for control of the state. The proxy-war dynamics of superpower confrontation during the Cold War exacerbated the conflict. A peace agreement in 1991 between the main parties led to multi-party elections. Disputing the outcomes, the National Union for the Total Independence of Angola (UNITA) resumed its war soon afterwards. In 1993, the UN Security Council imposed sanctions directed against UNITA. Following a subsequent peace agreement and UNITA's failure to comply, the UN imposed additional sanctions in 1997, including freezing bank accounts, a travel ban and closing UNITA's offices abroad. In 1998, the UN prohibited purchase of diamonds from UNITA-controlled territory.

However, UNITA circumvented these sanctions quite easily. This both enabled its ongoing war effort and undermined UN credibility. In response, the Security Council agreed to an ambitious fact-finding mission to develop recommendations to improve implementation. They recommended a "Panel of Experts" to trace violations in arms trafficking, oil supplies, the diamond trade and movement of UNITA funds. Despite initial low expectations, the Panel was successful in identifying how weapons were procured and transported and how the diamonds-for-arms trade was conducted.

The proactive and goal-oriented Chair of the Angola Sanctions Committee, Canada's UN Ambassador Robert Fowler, used this information to strengthen enforcement of the embargoes on arms and rough diamonds. He engaged with the countries involved in the supply of weapons in providing end-user certificates, helping to secure their co-operation with the sanctions regime. He threatened to "name and shame" private companies such as De Beers who were involved in the diamonds trade – a threat made all the more compelling due to the high-profile global civil society campaigns against "blood diamonds". He maintained strong working relations with international NGOs, as well as governments and multilaterals, and held frequent diplomatic briefings and press conferences.

Improved sanctions enforcement due to the work of the Sanctions Committee, supported by the Panel of Experts, during 2000 – 2002 seems to have reduced UNITA's capacity to continue its war effort. This greatly weakened UNITA, which was unable or unwilling to continue after government forces killed its leader, Jonas Savimbi, in 2002.

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5.3 Incentives within peace processes

Unlike many sanctions, incentives are seldom the product of a legally codified instrument. Instead, incentives are a range of measures applied to persuade one or all of the parties to a conflict to co-operate by introducing rewards for compliance. Donors, diplomats and multilateral organisations can use incentive-based measures to foster favourable conditions for engagement, encourage progress in a peace process, and support implementation of agreements and generate wider support for peace. The three principal sets of rewards, as detailed below, are those responding to: economic needs, including through donor assistance; political needs for legitimacy and recognition; and needs for assurances and security guarantees.[23]

- **Aid and peace conditionalities**

There have been attempts to use economic benefits like development aid to foster parties' motivations to participate in peace negotiations or to reach agreements.[24] Comprehensive programmes can contribute to sustainable peace, as undertaken by the European Commission in the border areas of Ireland and Northern Ireland.[25] Conditional donor assistance ('peace conditionalities') may be used within a peace process to offer the prospect of a 'peace dividend', as unsuccessfully practised in Sri Lanka. According to Goodhand's study of these measures,[26] peace conditionalities rarely succeed because aid is seldom a pre-eminent factor in the transition from war to peace. Instead aid generally operates on the margins of the political economy of war.

Incentives such as reconstruction and development assistance rarely take priority over political aspirations. The implication that parties would compromise long-held values in exchange for an economic benefit can be interpreted as a humiliating bribe. Furthermore, peace conditionalities are embedded in the wider context of donor conditionality and wider debates about sovereignty in donor–recipient relationships. While aid conditionalities are insufficient to alter the strategic calculus of decision-makers, they may still have a "signalling" effect. Used sensitively in combination with other measures, incentives may encourage authorities in a more constructive direction.

- **Recognition and normalisation**

A potentially more potent incentive for peacemaking is recognition. Conflict parties' political aspirations often lead them to value external relationships, which can be a resource in the struggle for political legitimacy. This means that diplomatic relationships can be one important source of legitimacy, prestige and recognition. Diplomatic engagement can encourage or reward positive change, just as it can also sanction negative behaviour. For example, former US President Clinton's decision to grant a visa to Gerry Adams, a representative of Sinn Féin (widely viewed as linked to the Irish Republican Army) soon after the IRA's ceasefire signalled to Irish Republicans the benefits of halting violence. This was important in helping to consolidate Republican support for peace talks – even as it angered the British government and Unionists.[27]

On the micro-scale, both non-state actors and governments benefit from measures that range from symbolic acts to more sustained forms of co-operation. For example, after decades of sanctions and isolation, the incremental process of Western governments' re-engagement with Myanmar/Burma since 2011 has strengthened pro-reform elements in the government. On the macro-scale, the opportunity to be recognised as a full member in good standing of international institutions or multilateral groups can be a powerful incentive (if partly because of associated economic benefits). As the Myanmar/Burma government's relations with the West gradually normalise, the prospect of lifting long-standing comprehensive trade and economic sanctions becomes an important incentive for deepening reform. This has also been notable in the European space, for example, where the potential to join the EU has been a powerful catalyst for change among many potential accession countries.[28]

- **Pledges and "guarantees"**

Externally given pledges of assistance, often called "guarantees", by international organisations, groups of states or other influential third parties can also be an incentive. Such pledges can help to address the lack of trust that often characterises relationships between parties at particularly risky points in the transition from war to peace. If they feel sufficiently confident that their agreements will be implemented, parties may be more willing to risk a negotiated settlement.

Political "guarantees" are often an integral aspect of internationally mediated peace agreements. They consist of political and practical support to assist implementation, and assurances that external parties will use their influence to foster parties' compliance with the terms agreed. **Security "guarantees"** typically involve external assistance in demilitarisation of a conflict, ranging from peacekeepers and ceasefire monitors to support for processes of security-sector reform. These measures are not typically considered to be incentives. Yet, if they help to tip the decision-making of the parties towards reaching agreement, such measures serve as incentive for agreement.[29]

- **Intrinsic and mutually reinforcing incentives**

Ultimately, the most durable inducements to finalise agreement are the **intrinsic incentives** inherent in the contents of a settlement itself. If an agreement provides a vision for a credible solution satisfying the parties' basic needs and interests, the parties are likely to prefer it to the current situation.[30] Such an incentive emerges as the outcome of the overall process rather than as a specific measure. External actors can help to generate the conditions in which this occurs through such measures as ending isolation, providing resources to implement agreements, or specific security guarantees to reduce the risk in ending a military campaign. They should aim to ensure that the incentives they offer underpin the parties' own intrinsic incentive to work for sustainable peace.

There is a key transition point in peace negotiations when the primary parties themselves incentivise each other to move in the direction of sustainable peace.[31] External actors can support the parties to take small, constructive and irreversible steps leading towards their becoming deeply invested in reaching a mutually agreeable outcome.[32] They can offer flexible and timely assistance to implement specific agreements. For example, the parties to the conflict over Bougainville generated mutually reinforcing incentives for engaging in a negotiation process as well as reaching and implementing their agreements. They crafted creative links between key issues and sequenced reciprocal steps for implementing the measures. The parties in Bougainville implemented an agreed step that was difficult for them (such as disposing of weapons), at the same time as the Papua New Guinea government also implemented an agreed step that was difficult but beneficial to the Bougainvillians (such as amending the constitution). External actors, particularly the Australian government, helped to facilitate the process, used their influence as *de facto* guarantors and provided financial and technical resources to help implement the agreements.[33]

5.4 Sanctions, incentives and peace processes: opportunities and risks[34]

Sanctions and incentives can be a source of leverage to convince conflict parties into a negotiated settlement of armed conflict. Yet durable and self-sustaining peace cannot be achieved solely through the exercise of coercion; it ultimately rests on the main parties' acceptance and ownership of the political settlement. In most cases, peace is possible only once the parties themselves perceive that the best way of achieving their goals is to resolve their differences.

Mediators tend to focus on how best to support the parties – and their wider societies – to engage in processes that will lay the foundations for peace. At the same time, other international actors may be making decisions about sanctions that affect how these same parties view the conflict and the mediation. This section explores why sanctions and incentives may be most effective in supporting peace if they are designed and implemented within an overarching strategy of peace process support. It suggests that these measures can be most effective if they are attuned to the motives of the conflict parties and enhance societal forces in favour of conflict resolution, thereby helping to generate momentum in the process.[35]

- **Deploying within a coherent and co-ordinated strategy to support a peace process**

Ideally, mediators have a voice in helping to conceive and implement a coherent strategy of peace-process support that marshals the multilateral political will and resources to support parties to negotiate and implement a viable agreement and to build public support. Such a strategy should be based on an assessment of the different actors and roles, the multiple factors at play in a situation, the potential leverage points and ways of interlinking issues to maximise opportunities for change. A variety of factors affects the prospects of developing a coherent and co-ordinated approach: the interests of key players, how they address dilemmas of contending objectives to forge an effective strategy, the quality of information and analysis, and developing synergy between those involved in mediation support and those working on helping to create the conditions for negotiations through sanctions. These factors are considered in this section.

Multiple actors, multiple interests and roles

External actors, especially governments, determine their responses to any specific conflict situation within the wider context of their multiple and, at times, contending interests and values. Furthermore, each has its own relationships and sources of influence with the parties. In some cases, there may be deep divides between key governments in their approach to a specific conflict, which is then subsumed in a wider contest between external powers.

All these competing goals and agendas strongly affect the decision making process around issuing and enforcing sanctions. They can take over the space for a peace process and send mixed signals to the conflict parties. Furthermore, parties to the conflict can take advantage of these conditions to manipulate external involvement to their benefit and undermine their adversaries' confidence in the process.[36] Mechanisms such as Group of Friends and Con-

tact Groups can be helpful for developing strategy, generating greater political will, and increasing the potential for coherence and co-ordination – even if they are not helpful in every situation.[37]

Prospects for influencing decision-makers may be greatest when key external countries are able to implement swift, co-ordinated and massive efforts to respond to changes in conflict dynamics. For example, the heads of state of regional countries reacted to Pierre Buyoya's 1996 coup d'état in Burundi by immediately imposing sanctions. This regional pressure appears to have been a significant factor leading to all-party talks in Arusha in 1998 that resulted in a durable if fragile peace agreement.

In the face of widespread isolation, it is often those who remain "friends" or who continue to pursue policies based on the strategy of "constructive engagement" that retain the most decisive influence over recalcitrant allies. This was demonstrated clearly in South Africa, when the Thatcher-led government used its considerable influence to encourage De Klerk's National Party to engage in negotiations.[38] This suggests the strategic importance of involving these allies in an overall process aimed at orchestrating influence.

Clear and well-aligned strategic objectives

Sanctions measures have been used in attempts to achieve many different kinds of objectives. Perhaps more than in any other region, international sanctions regimes applied to African countries have included the objective of reaching a peace settlement.[39] Yet, very often, the sanctions are not geared toward the objective of underpinning peace negotiations, as illustrated in Liberia (see Annex 1).

Furthermore, multiple policy goals in some contexts can lead to dissonance and hence the ineffective use of sanctions and incentives. In some cases the important goal of ending impunity is in tension with the goal of achieving a peace agreement. After an extensive negotiating process between the Lord's Resistance Army/Movement (LRA/M) and the Ugandan government – involving dialogue unparalleled in twenty years of violent conflict – the LRA/M ultimately refused to sign the final agreement in 2008. A compelling explanation was the reluctance of its indicted leader, Joseph Kony, to be brought to justice in The Hague.[40] In retrospect, the opportunity costs of this failed peace initiative have been tragic as there has been neither peace nor justice amid the ongoing fighting.

Box 3

Sudan and Darfur: prioritising peacekeeping over peacemaking[41]

The international response to the conflict over Darfur from 2004-2007 was marked by a multiplicity of goals and a profusion of mechanisms that combined to impede the search for a practical solution. The priority to, in effect, prioritize peacekeeping over peacemaking – driven in part by public advocacy campaigns to 'save' Darfur – complicated and obstructed the prospects for a sustainable peace agreement.

The USA strongly backed the Comprehensive Peace Agreement (CPA) to settle the war over South Sudan. The US had given assurances that, once the CPA was signed, they would move rapidly towards normalising relations with Sudan, including lifting long-standing bilateral sanctions, providing development assistance, facilitating debt relief and probably also bringing a US major oil company to Sudan. The US did not deliver on these promises because of the enormous public outrage in America caused by the Darfur war. Khartoum felt betrayed but understood that it needed to resolve the Darfur crisis before the US could deliver. It was this incentive, alongside the pressure of existing sanctions and ostracism, which made the Sudanese government agree to the AU ceasefire monitors and later to an expanded AU mission, participate in the Abuja talks and sign the DPA.

Initially, the US focus was on how to achieve a peace agreement that did not contradict or undermine the CPA. However peace talks became increasingly ancillary to the US emphasis on introducing UN troops. Neither Khartoum nor the UN was happy about a UN troop deployment without a peace agreement.

Yet, according to de Waal, negotiations between the international community (primarily the US, with the UNSC as a major instrument) and the government of Sudan over peacekeepers relegated the parallel AU-led peace negotiations into a political sideshow. Perhaps most importantly, the timetable of the AU-led negotiations for a peace agreement in Darfur was determined by the progress of diplomatic efforts to secure African, international and Sudanese governmental agreement to the dispatch of UN troops. This pressure undermined the negotiation process and contributed to the failure of the Darfur Peace Agreement (DPA).[42]

It is never easy to find an effective way of addressing the potential dilemmas of fostering strategic complementarities between equally desirable goals. Examples of such twin goals are promoting justice and building peace, or securing humanitarian protection *and* fostering agreement to end the war that is creating the insecurity, as sanctions on Sudan over Darfur reveal (Box 3). While difficult trade-offs are always likely, increasing the prospects of peace can enable a range of other policy goals.

Mediators and sanctioners: harmonising the sensitive interface

The decision to impose sanctions can affect international engagement with the targeted party, who may consider the sanctioning body to be biased. As the Sudan case (Box 3) illustrates, a government might be especially reluctant to accept a peacekeeping mission from an international body that is also sanctioning it. A similar dilemma arises for mediators from these bodies, which are required to maintain diplomatic dialogue with all parties to a conflict but may encounter difficulties if they are too closely associated with sanctions implementation.

Mediators are generally more effective if they have the trust and confidence of the parties. Sanctions enforcers search for ways to compel compliance, in ways likely to be intensely frustrating to the targets. While both may be key figures in implementing the overall international response, each is likely to have a very different relationship with the parties. Just as the mediator is likely to play a key role in driving forward a peace negotiation, the head of a sanctions committee may need to be willing to exert his or her diplomatic leadership to advance implementation of the sanctions regime (see Box 2). Developing modalities that enable distance between these key roles while maintaining an overall system of communication and shared analysis may be the key to enabling strategic complementarity.

Crafting strategies based on in-depth information and analysis

An important factor in developing effective strategies is basing them on a detailed understanding of the conflict system. This includes the political economy of the specific conflict situation and the motives of key figures and how their organisations operate. Such understanding can guide the development of a sanctions regime more likely to restrict the parties' access to resources they need to wage conflict – either through constraining reliable access to weapons or through reducing available funds. The "panel of experts" mechanism that supported the UN sanctions committees on Angola, Liberia and Sierra Leone played key roles in bringing this analysis to their committees.[43]

More holistic analysis of the motives and aspirations of leaders and their social groups should complement analysis of other aspects of conflict. Mediation teams tend to have greater insight into the perspectives and motives of the parties. They can help international policy-makers to identify unwarranted biases in proposed sanctions and incentives and to understand whether or how they might affect parties' engagement in reaching a negotiated settlement.

- **Calibrating sanctions and incentives to motivations and societal dynamics**

Parties' decisions about whether to engage seriously in a mediated peace process are not fixed but central to an ongoing strategic calculation, hinging on their analysis (realistic or not) of the alternatives. They are more likely to engage seriously if they believe that talks will result in a quicker, more viable, less painful or more rewarding way to achieve their goals. Sanctions and incentives can affect these choices. At their worst, they can distort the dynamics to make a conflict even more intractable, which is deemed to have been the case after Western governments' suspended aid and contact following Hamas' victory in the 2006 Palestinian legislative elections.[44] At their best, these measures can help to tip the balance in the parties' own strategic calculus towards engaging in negotiations and help them to reach and implement agreements, as seen in Liberia (see Annex 1). The usefulness of sanctions and incentives as methods for persuasion may depend on:

- How the leaders respond and whether they are concerned about the consequences of the sanctions on the public or themselves.
- The credibility of the potential sanctions and whether they will be implemented and enforced.
- The credibility of the sanctioners and particularly whether important allies will cut off their support.
- The wider political context and how it has shaped the expectations of the parties.[45]

Anticipating effects on intra-party dynamics and decision-making

Even within belligerent groups, there are almost always some who support a primarily political strategy and recognise the need for compromise in order to achieve the group's most important goals. Strategies, and the measures used within them, should be based on analysis of the various factions, the main points that distinguish them and how an incentive or sanction will strengthen particular views in an internal debate. For example, in Sudan the US government's failure to lift sanctions (an expected reward for the Comprehensive

Peace Agreement with the SPLM/A) in the wake of the escalation of conflict in Darfur undermined the credibly of moderates within the government who had argued for making compromises.[46]

Strengthening societal support for engaging in peacemaking

Sanctions and incentives can affect public attitudes toward leaders and a conflict situation (Box 4). Mediators need to be aware of how the application of sanctions or incentives could lead to the appearance of leaders "giving in" or being "bought" by external resources. Few leaders are willing to risk their credibility with their own support base. On the other hand, when a population has been isolated and war-weary, they may welcome a change of strategy.

Box 4

Apartheid South Africa: ending isolation as societal incentive for change[47]

Many believe that sanctions were key to South Africa's transition from apartheid. More significant than sanctions in convincing the National Party to negotiate with the African National Congress was the liberation movement's mass action that made the country increasingly ungovernable and led to a reduction in the country's credit rating, which choked off access to international capital. Yet, while international isolation and sanctions may not have forced the government to change its policies, they strengthened the case of those who argued for reform. A range of cultural sanctions and boycotts on South Africa's participation in international sports was a powerful sign to the public that the world did not approve of their country's policies. The boycotts also demonstrated widespread moral and political support for the anti-apartheid democracy movement. Crucially, isolation seems to have created a climate within South Africa's white communities to accept President De Klerk's transition strategy. This support became critical in 1992 when, responding to intense criticism from conservatives, he called a risky referendum to gauge the support of the white electorate. His overwhelming victory confirmed that the majority of whites supported a negotiated settlement.

Undermining the capacity to wage war

Arms embargoes, commodity sanctions and other forms of pressure appear to have weakened UNITA in Angola and Charles Taylor's government in Liberia, even if this may not have been the sole or even the decisive factor in bringing peace to their respective countries (see Annex 1). The potential of sanctions to weaken the strategic capacities of warring factions may be highly context specific. This potential may be greatest when a country is heavily dependent on a few commodities for financial resources, and/or lacks either domestic production capabilities or an external sponsor to provide the material needed for the war effort.

- **Using sanctions and incentives to generate momentum in a peace process**

Incentives and sanctions seem to be most effective if they help to shift the underlying conflict dynamic and build momentum toward resolution. Carefully applied, they can potentially help parties disentangle from their entrapment in a military or political strategy that is not working. This is most likely in cases when, as UN mediator Álvaro de Soto suggests, the mediator has an idea of how to get to the desired goal and encourages those close to the parties to use their influence to persuade them.[48] External actors can also help by contributing the necessary resources, thus providing an enabling incentive to settle the conflict.

Influencing the decision to negotiate

Sanctions and incentives can be used in a variety of ways to encourage parties to enter into peace negotiations. In some cases, the threat of sanctions may apply sufficient pressure to cause leaders to reassess their strategies. They can enhance the attractiveness of a negotiation process by helping to create viable and enticing alternatives (ending isolation, extending recognition and, more practically, signalling international assistance to achieve a tangible "peace dividend"). They can also help those entrapped in their own conflict strategy to find face-saving exit strategies so they can commit to a peace process. Ultimately the decision to enter into and stay with a negotiation process and to then follow through with implementing agreements, will be determined by how leaders and their constituencies interpret these changed conditions.

Box 5
Côte d'Ivoire: limiting the damage of war

Following a failed coup attempt in 2002, Côte d'Ivoire experienced a protracted political crisis and armed conflict for almost a decade. The conflict was driven by a struggle for control of the state and its resources, and disputes around ethnicity, land and citizenship rights. The proactive engagement of France and ECOWAS members, in particular, generated the political will necessary for comparatively robust international involvement of the AU, the UN and others.

Early military intervention by France, followed in 2004 by the establishment of a UN peacekeeping mission (UNOCI), helped to contain military confrontation and stabilise the country. Sanctions regimes were applied both to pressure key individuals and to block access to arms and finance.[49] Successive peace agreements adopted through high-level political talks created a framework for addressing the political crisis, ameliorating grievances of those who had been disenfranchised through the citizenship policy, and reforming the security sector. Despite sustained and complementary international efforts, the situation remained frozen for years. President Laurent Gbagbo held onto power until he was finally overthrown with French and UN assistance in 2011.

The underlying conflict appears to have been resistant to many measures, including mediated agreements, sanctions to pressure decision-makers to comply with these agreements, and international peacekeeping. According to McGoven these measures were effective in limiting the damage of war but were unable to generate a self-sustaining political solution and foster the transition to inclusive democracy. He argues that this was because the conflict served as justification for actors on both sides to use the situation to expand their illicit economic activities.[50]

Nevertheless, the international pressure did lead to orderly, if much delayed, presidential elections in 2010. When the results were challenged, Gbagbo's protracted record of failed compliance may have generated the basis for greater legitimacy in the use of coercive measures to transfer power to the electoral victor, opposition leader Allassane Ouattara.

Incentivising engagement in the process

Once a viable process has been created, external actors can seek to exercise **"process conditionality"**. This strategy is based on rewarding good-faith participation in a peace process while withholding desirable engagement from those who refuse to participate or who obstruct the process, as was done in El Salvador (Box 6).

Box 6
US military aid to El Salvador: incentivising peace negotiations

The US was a major military ally of the El Salvadoran government. A shift in the US government's position was an important external factor in peace talks with the FLMN. The 1990 Dodd-Leahy Act was carefully crafted to incentivise negotiations. It halved US military aid to the government, threatening to cut it to zero if the government did not negotiate in good faith or to restore it entirely if the guerrillas launched another offensive. Aid was restored in 1991 after a US helicopter was shot down. But the US administration ultimately opted to create incentives for a negotiated resolution through the prospect of substantial aid for implementation. Also, the US made direct contact with the FMLN during talks, signalling that it would live with the FMLN as a legitimate political party.

Implementing agreements

While useful at many points in the process, external political and security guarantees are often key to securing parties' final agreement to and implementation of peace accords. External actors can:

- Help parties overcome distrust in their adversary's intentions to implement agreements by instituting third-party verification mechanisms to ensure compliance.
- Support joint forums and political processes to oversee agreed reforms and help iron out the inevitable disputes between the parties.
- Provide symbolic and material incentives to help make the agreement more acceptable to both the rank-and-file of belligerent groups and the wider public, as well as sanctioning those who seek to wreck the agreement.
- Help increase the viability of implementation by providing resources to support reforms as well as reconstruction, reintegration and reconciliation processes.

Less commonly, sanctions can also help consolidate a fragile peace and pave the way to better governance, as in Liberia (see Annex 1).

5.5 Conclusion

Sanctions and incentives can be useful features of a response to peace and security concerns. When skilfully crafted as part of an overall strategy to support a peace process, their combined use can underpin a mediated peace agreement and consolidate peacebuilding. This strategy should be attuned to the conflict context, with specific measures carefully crafted to address the motivations of the key decision-makers while also being sensitive to the aspirations of the wider public.

International mediators, in particular, ought to maintain good relations with the conflicting parties while also retaining the trust of key players in the international community. This can be a difficult balance, especially if the international community is imposing sanctions the parties perceive as unfair. Mediators must aim to engage everyone involved in working towards a common goal of a mutually agreed peace settlement. However, it is important to recognise that attempts to impose overly prescriptive approaches can backfire and undermine the ownership essential to the long-term sustainability of change.

Annex 1
Liberia: a case study of strengthening sanctions

Liberians suffered recurring cycles of armed conflict from 1989 to 2003 and were at the centre of a complex regional conflict system involving Côte d'Ivoire, Sierra Leone and – less intensely – Guinea. In response, international actors developed innovative sanctions regimes to address the resources fuelling fighting throughout the sub-region. The experience of Liberia illustrates many of the themes discussed in this chapter. While the actions and motivations of Liberians were decisive, the complex interplay between the application of UN and ECOWAS sanctions and the use of mediation were vital in the effort to end war and build peace in both Liberia and the wider region.

Following several failed peace agreements, elections in mid-1997 brought Charles Taylor to power. Stability was short lived. An opposition movement based in the north, Liberians United for Reconciliation and Democracy (LURD), emerged and quickly gained momentum. By 2000, it had seized control of approximately 80 % of the countryside. Throughout this time, Taylor was in partnership with the Revolutionary United Front (RUF) in the civil war in neighbouring Sierra Leone.

A UN arms embargo had been in effect since 1992 but was poorly enforced. In 1998, ECOWAS imposed its own regional moratorium on small arms and light weapons trade for the region.[51] Motivated primarily to end the war in Sierra Leone, the UN Security Council demanded in 2001 that Taylor's government immediately cease its support for the RUF and for other armed rebel groups in the region (implying Côte d'Ivoire). It imposed a new set of targeted sanctions that could be lifted immediately following evidence of the government's compliance.

UN sanctions consisted of a renewed arms embargo, a ban on foreign travel by Taylor and other high-ranking members of the government and their immediate families and, most innovatively, a ban on the export of all diamonds from Liberia.[52] With implicit recognition of the regional "war economy" characteristics of the diamond trade, it also urged all diamond-exporting countries in West Africa to establish certificate-of-origin regimes. The resolution also called for an aircraft registry. The Council created mechanisms to monitor

compliance including a periodic reporting schedule and a sanctions committee supported by a panel of experts. It mandated further investigation of possible links between the exploitation of other natural resources and economic activities in Liberia and the fuelling of conflict in Sierra Leone and other countries.[53]

In 2002, as the war within Liberia intensified, the Security Council called on the Liberian government to undertake an internationally verifiable audit of its maritime and timber industries. These were suspected sources of funds for Taylor's war effort. This was the first time that the Council had ever called for an audit.[54] In 2003 the Council intensified existing sanctions by adding a ban on Liberian timber exports and extended individual sanctions to include a freeze on assets, including on Taylor and his family.[55]

The effect of these sanctions on the dynamics of conflict in Liberia and in the sub-region appears mixed. The individual sanctions had little apparent effect on the policies and practices of Taylor's regime. Subsequent interviews with targeted officials revealed that, although they did not like being stigmatised, sanctions did not succeed in motivating them to change the regime's policy.[56] In one case, a cabinet minister defected from the regime. But, as Wallensteen and Grusell observe, he responded to being sanctioned personally rather than politically, with the result that there was little consequence for the behaviour of the regime.[57]

More effective enforcement of the arms embargo and commodities sanctions was far more significant in changing the conflict dynamics. Taylor had used illicit funds to pay for illegal weapons and to fund the war effort through off-budget spending, with close associates operating the most lucrative parastatal companies.[58] The diamond and timber sanctions appear to have reduced income available to Taylor without actually ending the extraction and trade.[59] The combined effect of the embargoes was to constrain the previously free flow of money and weapons available for the wars in Liberia and Sierra Leone in particular.

From 2001, more effective enforcement increased the difficulty and expense of weapons procurement and made delivery unreliable.[60] For example, there are indications that as the LURD entered the capital in 2003, the government had no air power due to difficulties of securing replacement parts. Nevertheless, Taylor continued to import weapons, with one shipment confiscated just days before he handed over power.[61] One analysis suggests that the arms embargo had a "stabilising effect", as leaders on all sides understood that unreliable procurement would make it difficult for any one group to acquire material that could rapidly change the situation on the ground.[62]

Parallel to the sanctions development were international and Liberian-led efforts to find a negotiated settlement to the increasingly brutal and chaotic war inside Liberia. In early 2003, ECOWAS and the Inter-Religious Council of Liberia facilitated negotiations between the warring groups in Liberia but these failed to gain traction. Throughout this period, the Women of Liberia Mass Action for Peace contributed to delegitimising both the Taylor regime and other warring factions. They were able to extract Taylor's concession to participate in a new round of peace talks in Ghana, mediated by former Nigerian president General Abubakar.

However, on the day Taylor arrived for peace talks, Sierra Leone's UN-backed Special Court for war crimes announced it had indicted him, presumably in hopes that Ghana would turn him over to the Court. Ghana instead let Taylor flee to the relative safety of home; although talks continued, they remained inconclusive for months while Monrovia became a battlefield. By late July 2003, thousands more had died and talks remained stalled, with the parties showing little sign of serious negotiation.[63] External political pressure intensified and Liberian women led by Leymah Gbowee pressured negotiators by blockading the negotiation hall and ritually shaming them.

At the same time, the Taylor regime was collapsing, and losing its hold on power. The loss of revenues and access to weapons and parts combined with his inability to organise his security forces to mount an effective defence. By August 2003, even Taylor's own close allies were saying it was time for him to leave.[64] In mid-August, Taylor handed power to Vice-President Moses Blah and accepted Nigeria's offer of asylum. Days later, the parties signed the Comprehensive Peace Agreement establishing a transitional government.

In response to these developments, the UN Security Council created a third round of sanctions aimed explicitly at helping to consolidate the transition and to peacebuilding through DDR, SSR and governance.[65] The arms embargo, diamond sanctions and timber embargoes continued but the objectives shifted. These included gaining physical and administrative control over forest regions at the time controlled by former insurgents, presumably with the objective of preventing the recurrence of armed conflict.

Additionally and most innovatively, the renewed sanctions aimed to improve resource governance so that "government revenues from the timber industry are not used to fuel conflict… but are used for legitimate purposes for the benefit of the Liberian people, including development."[66] These sanctions, combined with substantial peacekeeping and peacebuilding operations, helped provide sufficient stability for Liberians to embrace the significant long-term challenge of building a more inclusive and democratic state.

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Michael is currently developing ways of addressing parties' conflicting perceptions of history where this forms an obstacle in intrastate peace processes.

Michael's publications include *Mobilizing Knowledge for Post-Conflict Development at the Local Level* (RAWOO, The Hague, May 2000); *The Implementation of the Right to Self-Determination as a Contribution to Conflict Prevention,* Report of the International Conference of Experts, UNESCO Division of Human Rights, Democracy and Peace/UNESCO Centre of Catalonia (Barcelona, 1999); "Atrevir-S'hi: El diàleg constructiu, la millor eina per resoldre conflictes" in Avui, Barcelona (7 November 2009, co-authored with M. Boltjes); "On Solutions to the Sino-Tibetan Conflict" in *Globalization, Technologies and Legal Revolution: The Impact of Global Changes on Territorial and Cultural Diversities, on Supranational Integration and Constitutional Theory* (Palermo, Poggeschi, Rautz, Woelk, eds. EURAC Research, Bozen/Bolzano 2012).

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Chapter 4: Implementation of peace agreements

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Chapter 5: Tipping the balance? Sanctions, incentives and peace processes

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David Cortright and George Lopez, Linda Gerber-Stellingwerf, Eliot Fackler, Joshua Weaver, *Integrating UN Sanctions for Peace and Security* (Sanctions and Security Research Program, 2010): available at http://www.sanctionsandsecurity.org/wp-content/uploads/Integrating-UN-Sanctions-for-Peace-and-Security.pdf.

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Endnotes

Chapter 1: Conflict analysis in peace processes: pitfalls and potential remedies

1 These include the Central African Republic (Inclusive Political Dialogue, 2008), Comoros, Somalia (Mbagathi talks, 2003–2004; Djibouti talks, 2008) and Sudan (Naivasha and related talks leading to the Comprehensive Peace Agreement, 2002–2005; Abuja talks on Darfur, 2006; Doha talks on Darfur, 2009–2011).

2 See Henri Boshoff, Waldemar Very and George Rautenbach, *The Burundi Peace Process: From Civil War to Conditional Peace,* Institute for Security Studies Monograph 171 (June 2010), available at http://www.iss.co.za/uploads/Mono171.pdf (accessed 15 May 2012).

3 See Roger Fisher and Bill Ury, *Getting to Yes: Negotiating Agreement Without Giving In* (New York: Penguin Books, 1983), for more on this concept of a party's BATNA or "best alternative to a negotiated agreement."

4 This phrase was reportedly the mantra of former Finnish President Martti Ahtisaari, who as mediator in the Aceh conflict in Indonesia in 2005 was perhaps the best-known proponent of this approach. For more, see Konrad Huber, "Aceh's Arduous Journey to Peace" in Aguswandi and Judith Large (eds), "Reconfiguring Politics: The Indonesia-Aceh Peace Process", *Accord,* Issue 20 (2008), available at http://www.c-r.org/accord-article/acehs-arduous-journey-peace (accessed on 9 August 2012).

5 Nicole Itano, "Liberating Liberia: Charles Taylor and the Rebels who Unseated him", Institute for Security Studies Occasional Paper 82 (November 2003), available at http://www.iss.org.za/pubs/papers/82/Paper82.html (accessed on 15 May 2012).

6 See the Additional Resources section at the end of this chapter for links to useful publications and conflict analysis tools. One such approach is *conflict mapping,* which can vary in the degree of generality or level of detail that an analysis seeks to achieve, generally by looking at a relatively consistent set of questions as a guide for understanding a conflict. For a succinct overview of the elements that could be included in conflict mapping, and some links to how others have operationalised such an approach, see http://www.colorado.edu/conflict/peace/treatment/cmap.htm.

7 The UK government has invested significantly in developing various conflict analysis tools, particularly for its "whole-of-government" approach to strengthening fragile or conflict-affected states. These tools include Political Economy Analysis (PEA), Strategic Conflict Assessments (SCA) and exclusion analysis. For an overview of this approach, see DFID (2010). Also, see the US government's Interagency Conflict Assessment Framework at http://www.state.gov/documents/organization/187786.pdf.

8 Confidential telephone interview, peace process expert, 9 May 2012.

9 Confidential telephone interview, peace process expert, 16 May 2012. The Mission's website even includes transcript and audio recordings from key meetings over the last four years. For more, see http://www.uncyprustalks.org/nqcontent.cfm?a_id=3046&tt=graphic&lang=l1 (accessed on 19 May 2012).

10 Please refer to the AU CMD 2011 Standard Operating Procedures for Mediation Support, especially Annex A: Conflict analysis template (pp.17–20).

11 Confidential telephone interviews, peace process experts, 4 and 14 May 2012.

12 See Paul R. Williams and Matthew T. Simpon, "Drafting in Doha: An assessment of the Darfur Peace Process and Ceasefire Agreements", pp.41–57, in Melanne A. Civic and Michael Miklaucic (eds), *Monopoly of Force: The Nexus of DDR and SSR* (Washington DC: National Defense University Press, 2011).

13 Confidential telephone interview, peace process expert, 3 May 2012.

14 Confidential telephone interview, peace process expert, 14 May 2012.

15 As quoted in Chester A. Crocker, Fen Olser Hampson and Pamela Aall, "The mediator's environment", in *Taming Intractable Conflicts: Mediation in the Hardest Cases* (Washington DC: United States Institute of Peace, 2004), p.78.

16 Confidential telephone interview, peace process expert, 3 June 2012.

17 Confidential telephone interview, peace process expert, 3 May 2012.

18 Confidential telephone interview, peace process expert, 9 May 2012.

19 Confidential telephone interview, peace process expert, 3 June 2012. The assumption was that this would allow the mediation team to affirm that certain elements of its worldview and analysis (though perhaps not all) were being taken seriously. This was thought to build the team's credibility and authority for later use with the parties, when perhaps the mediation team's approach or decisions might go against a party's viewpoint or agenda.

20 Confidential telephone interview, peace process expert, 20 May 2012.

21 Confidential telephone interview, peace process expert, 9 May 2012.

22 Confidential telephone interview, peace process expert, 20 May 2012.

23 Confidential telephone interview, peace process expert, 14 May 2012.

24 Confidential telephone interview, peace process expert, 16 May 2012.

25 See Jason Matus, "The three areas: A template for regional agreements,' in "Peace by Piece: Addressing Sudan's Conflicts", *Accord* 18 (2006): available at http://www.c-r.org/sites/c-r.org/files/Accord18_11Thethreeareas_2006_ENG.pdf (accessed on 13 May 2012).

26 The full-length analyses were condensed into a single document entitled "Briefing paper: Conflict areas" by Leif Manger (University of Bergen), Wendy James (University of Oxford) and Douglas H. Johnson (St Antony's College, Oxford), 21 January 2003. Email communication with a regional expert, 10 April 2012. Electronic version on file with the author.

27 Confidential telephone interview, peace process expert, 20 May 2012. In addition, this adviser to the process noted that the right parties were not at the table and not discussing the right issues for Doha to have been considered a genuine peace process.

28 For a critique of "deadline diplomacy" in Abuja, see Laurie Nathan, *No Ownership, No Peace: The Darfur Peace Agreement,* Working Paper 5 (Crisis States Research Centre, London School of Economics: September 2006): available at http://www2.lse.ac.uk/internationalDevelopment/research/crisisStates/Publications/wpPhase2/wp5.aspx (accessed on 19 May 2012).

29 For more, see http://www.smallarmssurveysudan.org/pdfs/facts-figures/armed-groups/darfur/HSBA-Armed-Groups-LJM.pdf (accessed on 19 May 2012).

30 Confidential telephone interview, peace process expert, 14 May 2012. For the final version, see http://unamid.unmissions.org/Portals/UNAMID/DDPD%20English.pdf (accessed on 19 May 2012).

31 For a brief overview of Darfur peace efforts during and following the Doha process, see "Darfur Peace Process" on the Sudan Human Security Baseline Assessment website at http://www.smallarmssurveysudan.org/facts-figures-darfur-peace-process.php (accessed on 19 May 2012).

32 Confidential telephone interviews, peace process experts, 20 May and 3 June 2012.

33 Email correspondence with a peace process expert, 15 May 2012, including a copy of the paper outlining possible solutions for the Three Areas (on file with the author).

34 Email correspondence with a peace process expert, 5 June 2012. Electronic version on file with the author.

35 For more, see http://www.mpil.de/ww/en/pub/research/details/know_transfer/africa_projects/heidelberg_darfur_dialogue.cfm (accessed on 12 August 2012).

36 Confidential telephone interview, peace process expert, 3 June 2012.

37 Confidential telephone interview, peace process expert, 9 May 2012.
38 Confidential telephone interview, peace process expert, 4 May 2012.
39 This report was submitted in April 2009. See "UN Mission submits reports on disputed internal boundaries in Northern Iraq" (22 April 2009): available at http://www.un.org/apps/news/story.asp?NewsID=30553&Cr=iraq&Cr1# (accessed on 19 May 2012).
40 See the PILPG website for more information: http://publicinternationallawandpolicygroup.org/practice-areas/peace-negotiations/ (accessed on 14 May 2012).
41 These could include academics or conflict management experts from think-tanks or specialised organisations like the Centre for Humanitarian Dialogue, Conflict Prevention and Peace Forum (CPPF), Crisis Group, International Peace Institute, US Institute of Peace and others. For more information, see http://www.hdcentre.org/, http://www.ssrc.org/programs/cppf/, http://www.crisisgroup.org/ and http://www.ipacademy.org/, respectively (all accessed on 19 May 2012).
42 Ken Menkhaus, "Diplomacy in a failed state: International mediation in Somalia", pp.16–19 in "Whose Peace Is It Anyway? Connecting Somali and International Peacemaking", *Accord* 21 (2010): available at http://www.c-r.org/accord-article/diplomacy-failed-state-international-mediation-somalia (accessed on 9 May 2012).
43 These included efforts in the following years: 1991 (the Djibouti Talks), 1993 (the Addis Ababa Talks), 1996–1997 (the Sodere Conference and the competing Cairo Conference), 2000 (Arta Peace Conference) and 2003–2004 (the Mbagathi conference, which first started in another Kenyan town, Eldoret).
44 Meredith Preston McGhie, "Mediating Djibouti", pp.20–23 in "Whose Peace Is It Anyway? Connecting Somali and International Peacemaking", *Accord* 21 (2010): available at http://www.c-r.org/accord-article/diplomacy-failed-state-international-mediation-somalia (accessed on 9 May 2012).
45 Confidential telephone interview, regional security analyst, 8 May 2012. The rest of this section is based on information from this interview, unless otherwise noted.
46 Former high-ranking Kenyan official, Bethuel Kiplagat assumed the role of Kenyan envoy to the peace process and IGAD mediator in late 2003, after which the venue for the peace conference moved to Mbagathi, on the outskirts of Nairobi.
47 As one expert points out, "Somalia has been exceptionally prone to disputes over representation, making it difficult to identify representatives at the negotiating table who are both legitimate (i.e. able to speak on behalf of a constituency) and authoritative (i.e. able to enforce agreements reached)." See Menkhaus, "Diplomacy in a failed state", Accord 21, p.16. For more on the complexities of representation in Somalia – including the origins of the so-called 4.5 formula for clan representation – see Markus V. Hoehne, "Political representation in Somalia: Citizenship, clanism and territoriality", pp.34–37 in "Whose Peace Is It Anyway? Connecting Somali and International Peacemaking", *Accord* 21 (2010), available at http://www.c-r.org/accord-article/diplomacy-failed-state-international-mediation-somalia (accessed on 9 May 2012).
48 Email correspondence, regional security analyst, 9 May 2012. This applied especially to the Phase-II committees on constitutional arrangements, security and reform, resource-sharing and economic development, transitional justice and reconciliation and regional and international relations.
49 Confidential telephone interview, peace process expert, 16 May 2012.
50 Email correspondence, peace process expert, 15 May 2012 (on file with the author).

Chapter 2: Process options and strategies in conflict settlement negotiations

1 For advice detailed discussion related to Confidence Building Measures, please see the relevant chapter in the AU mediation handbook.

2 The observer group was composed of five officers each from the parties to the agreement and 40 officers form other African countries.
3 Composed of five representatives from each party, as well as representatives from the OAU, Burundi, Tanzania, Uganda, Zaire, Belgium, France and the United States.
4 For a detailed discussion related to incentives and sanctions in peace processes, please see the relevant chapter in the AU mediation handbook.

Chapter 3: Confidence Building Measures (CBMs) in Peace Processes

1 For a historical overview of how CBMs developed and were defined in different contexts, see Tools for building confidence on the Korean peninsula, A report by Zdzislaw Lachowski, Martin Sjögren, Alyson J. K. Bailes, John Hart and Shannon N. Kile (Stockholm: Stockholm International Peace Research Institute (SIPRI) and Simon Mason and Victor Mauer Center for Security Studies (CSS) at ETH Zurich, SIPRI and CSS, 2007) Available at www.korea-cbms.ethz.chAlyson J. K. Bailes, John Hart and Shannon N. Kile (Stockholm: Stockholm International Peace Research Institute (SIPRI) and Simon Mason and Victor Mauer Center for Security Studies (CSS) at ETH Zurich, SIPRI and CSS, 2007) Available at www.korea-cbms.ethz.ch
2 Negotiations are understood as a process of joint decision-making and interdependent strategizing between the conflict parties, aiming at mutually acceptable outcomes. Mediation is understood as assisted negotiations, by an acceptable third party. Mediators shape the process, but leave the decision making on the content to the parties.
3 The notions of "trust" and "confidence" are often used interchangeably. In some cases, a distinction is used whereby "trust" (i.e. in a family) entails greater risk-taking than "confidence" (i.e. between business partners). According to this understanding, "confidence" does seek some minimal measures or testing period to minimize the risk that it will be misused, while "trust" entails a greater leap of faith. (point mentioned by Jeff Mapendere, UN Ceasefire Mediation and Management Course, 16–26 April 2012, Oslo, Norway). A detailed analysis of the role of confidence (and CBMs) in the overall framework of conflict prevention and conflict resolution is outlined in: Gerald M. Steinberg "The Centrality of CBMs: Lessons from the Middle East", in David Carment and Albrecht Schnabel (eds), *Conflict Prevention – from Rhetoric to Reality*, (NY: Lexington Books, 2004), p.280 onwards.
4 Telephone interview with Laurie Nathan, 22 March 2011.
5 Kelman, H.C. "Building trust among enemies: The central challenge for international conflict resolution", *International Journal of Intercultural Relations*, 29(6) (2005), pp.639–650.
6 Lack of will from the side of the conflict actors is another major obstacle that is shaped by their perception of, and dissatisfaction with, the status quo. The geo-political context may also actively hinder a negotiation process, if regional or global players have vested interests in the conflict. Negotiations may also be impeded by the limitations of the mediator's mandate or a lack of professionalism (for example, impotence, arrogance, partiality, ignorance, inflexibility, haste and false promises). See Brahimi, Lakhdar/Ahmed, Salman. *In pursuit of sustainable peace, the seven deadly sins of mediation*. (New York: Center on International Cooperation, New York University, 2008) Available at http://www.cic.nyu.edu/internationalsecurity/docs/7sinspolicybrief.pdf
7 One broad definition of non-military CBMs was recently presented in the OSCE Guide on Non-Military Confidence-Building Measures (CBMs), Vienna: OSCE, 2012: "… non-military confidence building measures are actions or processes undertaken in all phases of the conflict cycle and across the three dimensions of security in political, economic, environmental, social or cultural fields with the aim of increasing transparency and the level of trust and confidence between two or more conflicting parties to prevent inter-state and/or intra-state conflict from emerging, or (re-) escalating and to pave the way for lasting conflict settlement."

8 The 1982 UN Comprehensive study on CBMs stressed this fact when it noted that, "It is only on concrete actions, which can be examined and assessed, that confidence can be founded. Positive experiences, which are the essential prerequisite of the growth of confidence, are gained by actions only, not by promises." United Nations Centre for Disarmament, Report of the Secretary-General, Comprehensive Study on Confidence-building Measures, (New York, United Nations : 1982).

9 "Trust is a psychological state comprising the intention to accept vulnerability based upon positive expectations of the intentions or behavior of another." Rousseau, D. M., Sitkin, S. B., Burt, R. S., and Camerer, C. "Not so Different After All : A Cross-Discipline View of Trust", in *Academy of Management Review*, 23, (2008), pp.393–404. The text is summarized online in "Trust and Trust building" Roy J. Lewicki and Edward C. Tomlinson, (December 2003) Available at http://www.beyondintractability.org/essay/trust_building/
Trust correlates positively with co-operation ; mistrust with competitive behaviour .Trust generally grows in three instances : if one believes the other has little to gain from untrustworthy behaviour ; if one feels one can exert some influence on the other actor's behaviour ; and if actors have experienced co-operative behaviour in the past. Conversely, the perception that the other has intentionally caused damage generally increases one's mistrust. See Deutsch, M. "Trust and Suspicion", *Journal of Conflict Resolution*, 2 (4), (1958), pp.265–279.

10 See "The Wajir story, Responding to Conflict" available at http://www.respond.org/pages/films.html This section also draws on information from interviews with the late Dekha Ibrahim Abdi, a mediator who worked in Wajir and other areas in the north-east of Kenya.

11 See the UNHCR website (http://www.unhcr.org/pages/49e4861f6.html). This section also draws on interviews with different UN staff.

12 See, Dekha Ibrahim Abdi and George Wachira, 2008, Concerned Citizens for Peace, available at http://www.rightlivelihood.org/fileadmin/Files/PDF/Literature_Recipients/Dekha_Abdi/Concerned_Citizens_for_peace.pdf

13 Interview of Simon Mason with Julian T. Hottinger, March 2012.

14 In the 1982 UN study on CBMs during the Cold War, the importance of having different types of CBMs beyond the military sector, and the need for tailor-made approaches, was already being highlighted : "Confidence, like security, is a result of many factors, both military and non-military. Consequently, confidence or its absence cannot be based on the same combination of factors for all States and in all circumstances. In that context, it was recalled that a number of Governments from various regions have stressed the special necessity for confidence building in the political, economic or social fields." United Nations Centre for Disarmament, *Report of the Secretary-General, Comprehensive Study on Confidence-building Measures*, (New York, United Nations : 1982), p.5.

15 Further examples beyond those given here on economic, environmental, societal, cultural and political CBMs, see chapter III of the OSCE Guide on Non-Military Confidence-Building Measures (CBMs), Vienna : OSCE, 2012.

16 For more on the relationship between non-military CBMs and Confidence- and Security-Building Measures (CSBMs) see : OSCE Guide on Non-Military Confidence-Building Measures (CBMs), Vienna : OSCE, 2012.

17 For more details of some of these examples, see Tools for building confidence on the Korean peninsula, A report by Zdzislaw Lachowski, Martin Sjögren, Alyson J. K. Bailes, John Hart and Shannon N. Kile (Stockholm : Stockholm International Peace Research Institute (SIPRI) and Simon Mason and Victor Mauer Center for Security Studies (CSS) at ETH Zurich, SIPRI and CSS, 2007) http://www.korea-cbms.ethz.ch/part2.htm.

18 Nuba Mountains Ceasefire Agreement, online at www.gurtong.net.

19 See Jeremy Brickhill, "Security and stabilization in Somalia : learning from local approaches", in Mark Bradbury and Sally Healy (Eds.), "Whose peace is it anyway ? Connecting Somali and international peacemaking, *Accord* Issue 21 (London, Conciliation Resources, 2010) pp.27–29.

20 For more information see Mediation Support Project, *Mediation Essentials : Business Actors in Mediation Processes,* (Zurich, Bern : swisspeace / CSS ETH-Zurich, 2010). On peace parks, see http://www.peaceparks.org/ On local economic activities in Somalia, see : Peter D. Little, Somalia : Economy Without State (Bloomington and Indianapolis : Indian University Press, 2003). pp.206.

21 This information is drawn from the United States Institute of Peace, *Certificate Course in Negotiation and Conflict Management*, (2010).

22 Point mentioned by Jeremy Brickhill in an interview with Simon Mason, 11 June 2012.

23 The independent, yet related, nature of "actors" and "activities" was highlighted by Julian T. Hottinger in an interview with Simon Mason 27 March 2012.

24 Information drawn from an interview of Simon Mason with Julian T. Hottinger, 27 January 2012.

25 "If parties realise that if they keep on fighting about agreement number 4, they might lose agreements 1, 2 and 3 that are beneficial to each side, they may be more constructive when negotiating agreement number 4", I. William Zartman, telephone interview with Matthias Siegfried, 7 April 2011.

26 Telephone interview with I. William Zartman, 7 April 2011.

27 "Intractable conflicts cannot be resolved with great leaps. They require small steps and time, time for the disputants to alter their image of each other." (Landau, D. and Landau, S., "Confidence-building measures in mediation", *Conflict Resolution Quarterly*, 15 (1997), p.102 ; "CBMs are now associated predominantly with a 'confidence building process' (…) a process which allows participants to become more aware of their respective positions and concerns – and the basis for their action" Marie-France Desjardins, *The Adelphi Papers*, Special Issue : Rethinking Confidence-Building Measures, Volume 36, Issue 307, (1996), p.18.

28 See Gerald M. Steinberg, "The Centrality of CBMs : Lessons from the Middle East", in David Carment and Albrecht Schnabel (eds.), *Conflict Prevention – from Rhetoric to Reality*, (New York : Lexington Books, 2004), p.291 onwards.

29 George W. Bush, "Bush State of the Union address", January 29, 2002.

30 Source : Tools for building confidence on the Korean peninsula, A report by Zdzislaw Lachowski, Martin Sjögren, Alyson J. K. Bailes, John Hart and Shannon N. Kile (Stockholm : Stockholm International Peace Research Institute (SIPRI) and Simon Mason and Victor Mauer Center for Security Studies (CSS) at ETH Zurich, SIPRI and CSS, 2007) Available at www.korea-cbms.ethz.ch

31 For a more comprehensive discussion of the concept of "ripeness" and when to intervene, see I. William Zartman and Alvaro de Soto, *Timing Mediation Initiatives*, USIP Peacemaker's Toolkit (Washington D.C. : USIP, 2010).

32 The "trust/understanding/will" triangle was highlighted by Julian T. Hottinger in a workshop in October 2009 in Switzerland to show the interdependence of these factors and discuss how negotiators and mediators can address them.

33 International Crisis Group, "Cyprus : Reversing The Drift To Partition", *Europe Report* N°190 (10 January 2008).

34 See Marie-France Desjardins, *The Adelphi Papers*, Special Issue : Rethinking Confidence-Building Measures, Volume 36, Issue 307, (1996), p.62.

35 James Copnall, Ivory Coast's zone of no-confidence, BBC news : 18 May 2005, http://news.bbc.co.uk/2/hi/africa/4556335.stm

36 International Crisis Group, "Cyprus : Reversing The Drift To Partition", *Europe Report* N°190 (10 January 2008).

37 Point mentioned by Julian T. Hottinger in an interview with Simon Mason, 31 October 2011.

38 John Darby, Roger Mac Ginty, *Contemporary Peacemaking : Conflict, Peace Processes and Post-war Reconstruction*, (New York, Palgrave Macmillan : 2008), p.354.

39 For more information see Landau, D. and Landau, S., "Confidence-building measures in mediation", Conflict Resolution Quarterly, 15 (1997), pp.97-103.

40 Telephone interview of Matthias Siegfried with Laurie Nathan, 22 March 2011.

41 Marie-France Desjardins, *The Adelphi Papers*, Special Issue : Rethinking Confidence-Building Measures, Volume 36, Issue 307 (1996), p.33.

42 Marie-France Desjardins, *The Adelphi Papers*, Special Issue : Rethinking Confidence-Building Measures, Volume 36, Issue 307 (1996), p.39.

43 Informal Working Paper on CBMs drafted by the "Mediation Support Unit" (MSU) of the United Nations Department of Political Affairs.

44 Based on an interview of Simon Mason with Julian T. Hottinger, 31 October 2011.

45 Further general issues to consider when designing CBMs are outlined in the OSCE Guide on Non-Military Confidence-Building Measures (CBMs), Vienna : OSCE, 2012.

Chapter 4: Implementation of peace agreements

1 It is not the conflicts between states that this publication focuses on, because these account for just a small fraction of conflicts in the world today. The overwhelming majority of armed conflicts are within states, and it is the agreements concluded to end these intrastate conflicts that are rarely fully implemented. Consequently, we focus on the role of mediators with respect to the implementation of intrastate peace agreements.

2 For discussions of the problems and challenges of implementation of intrastate agreements and the troubling track record of such implementation, *see* M. Boltjes (ed.), *Implementing Negotiated Agreements: The Real Challenge to Intrastate Peace* (The Hague: Asser, 2007). This study was the result of research and extensive behind-closed-door discussions among experts, especially experienced mediators and persons representing parties to intrastate conflicts.

3 According to the Stockholm International Peace Research Foundation (SIPRI), for the seventh year running, no major interstate conflict was active in 2010. Over the decade 2001–2010, only 2 of the total of 29 major armed conflicts have been interstate (*SIPRI Yearbook 2011: Armaments, Disarmaments and International Security* (Oxford, 2011), Appendix 2A). Similarly, from 1990 to 2002, of the 58 major conflicts recorded in 46 locations around the world, only three were interstate, and 55 were intrastate (*SIPRI Yearbook 2003: Armaments, Disarmaments and International Security* (Oxford, 2003) p.109). If all armed conflicts are included in the survey, a similar picture emerges. Francesc Vendrell assesses that 90% of all armed conflicts since WWII have been intrastate (F. Vendrell, "The Role of Third Parties in the Negotiation and Implementation of Intrastate Agreements: an Experience-Based Approach to UN Involvement in Intrastate Conflicts", in Boltjes (ed.), see note ii above, p.193.

4 An increasing number of such conflicts pit a population group, frequently an indigenous people, against an extractive industry corporation, sooner or later implicating the state government into the conflict as well.

5 See, for discussions of the sources of intrastate conflicts, Zartman, "Sources and settlement of ethnic conflicts", in A. Wimmer, R. Goldstone, D. Horowitz et al. (eds), *Facing Ethnic Conflicts, Towards New Realism* (Lanham, 2004), pp.141–145).

6 Elsewhere, the term "armed groups" is used to describe those non-state armed groups that challenge the authority of the state. (See T. Whitfield, *Engaging with Armed Groups,* Mediation Practice Series No. 2, p.5; L. Chounet-Cambas, *Negotiating ceasefires,* Mediation Practice Series No. 3, p.5). In this publication we use "non-state actors" and "non-state parties" to refer to the same political movements, believing that this term is more appropriate in discussions on implementation of peace agreements, as non-state actors may or may not be armed at different stages of peace and implementation processes.

7 B.F. Walter, "The critical barrier to civil war settlement", *International Organization* Vol. 51, No. 3, (Summer 1997, pp.335–364), p.335.

8 B.F. Walter, "The critical barrier to civil war settlement", *International Organization* Vol. 51, No. 3, (Summer 1997, pp.335–364), p.335.

9 The party in opposition at the time the accords were signed in 1997, the Bangladesh Nationalist Party, opposed the agreement as constituting a serious threat to the independence and sovereignty of the country. When it won the elections in 2001 its government slowed down implementation and stopped implementing some aspects of the agreement (I. Jamil and P.K. Panday, "The elusive peace accord in the Chittagong Hill Tracts of Bangladesh and the plight of the indigenous people", *Commonwealth & Comparative Politics* Vol. 46, No. 4 (November 2008) p.473 and note 21.

10 UNDP, "Capacity Development of National Human Rights Commission Project, Phase II" (CDNHRC-II: Jan 2009 – Dec 2010, www.UNDP.org.np). For a discussion of the culture of impunity there, see International Crisis Group, *Nepal: Peace and Justice,* Asia Report No. 184 (14 January 2010).

11 The High Court also invoked equality and non-discrimination law arguments. The matter is currently pending on appeal in the Supreme Court, while the judgment of the High Court Division has been stayed.

12 *Study on the Status of Implementation of the Chittagong Hill Tracts Accord of 1997,* UN Doc. E/C.19/2011/6, Report submitted by the Special Rapporteur to the Permanent Forum on Indigenous Issues, 10th session, p.15.

13 Non-state parties have no standing in the International Court of Justice (ICC) or regional courts. In some courts, such as the European Court of Human Rights and the Inter-American Court of Human Rights, individuals have standing to raise human rights issues only. The ICC is a criminal court and not a dispute resolution mechanism. Its criminal jurisdiction can, moreover, be invoked only against the commission of genocide, crimes against humanity and war crimes. See Section 5d in this chapter for the most recent development in making one important international mechanism, the Permanent Court of Arbitration, available to both state and non-state parties in intrastate conflicts.

14 Briefing by Joint Special Envoy of the UN and the League of Arab States, Kofi Annan, to the UN General Assembly, 5 April 2012.

15 Memorandum of Understanding Between the Government of the Republic of Indonesia and the Free Aceh Movement, 15 August 2005, Article 6 "Dispute Settlement".

16 D. Sguaitamatti, "Côte d'Ivoire, Ouagadougou Agreement" in *Unpacking the Mystery of Mediation in African Peace Processes* (Mediation Support Project, CSS and SwissPeace, 2008) p.38.

17 In Côte d'Ivoire, other factors, including the absence of sanctions for non-implementation by a party in the Ouagadougou Agreement and the reduction of the international community's political and military role in the peace process, contributed to this agreement's less than full implementation and the resumption of conflict in 2011. See N. Cook, *Côte d'Ivoire Post-Gbagbo: Crisis Recovery* (Washington DC: Congressional Research Service Report for Congress RS21989, 20 April 2011), p.79.

18 See K. Höglund, "Obstacles to monitoring: Perceptions of the Sri Lanka Monitoring Mission and the dual role of Norway", *International Peacekeeping* Vol. 18, No. 2 (April 2011) pp.210–225. Norway's role was more complicated since it was monitoring the ceasefire agreement while *at the same time* mediating in political talks between the parties. The same was true of the UN's simultaneous monitoring and mediating role in the Georgia-Abkhazia conflict from 1994.

19 Vendrell (note iii above, p.197). Note that the East Timorese were not party to the negotiations due to Indonesia's objections and were instead kept informed by the UN Secretary-General's representative. The "case of West Papua" refers to the UN's highly questionable role in the process by which West Papua acceded to Indonesia.

20 Some mediators are selected for different reasons and may not be trained or experienced in process design and lack the skills. In practice, moreover, mediators are not always enabled by parties to fully exercise this prerogative, even though it would be in the interest of the peace process that they do so.

21 Much has been written on this subject. Excellent writings include the collection of articles in the special issue of International Negotiation Vol. 13, No. 1 (2008) and Sanam Naraghi Anderlini's *Women Building Peace: What They Do, Why it Matters* (2007). Much has also been written on spoilers, including in the HD Centre's Mediation Practice Series No. 2, *Engaging with Armed Groups*, which looks at the question of whether and how the mediator should engage with armed groups, some of whom could be spoilers.

22 For a collection of accounts and analyses of the Bougainville peace process, see A. Carl and Sr. L. Carasu (eds), *Weaving Consensus: Papua New Guinea–Bougainville Peace Process* (Accord, 2002). See also comment in Whitfield (note vi above), p.24.

23 Constitution of Tanzania (1977), Article 98(1)(b), which provides that amendments that affect the constitutional arrangements that constitute the Union with Zanzibar require a two-thirds majority of the National Assembly and the Zanzibar House of Representatives. However, as a result of flawed elections, Tanzania's ruling political party has prevented the more nationalistic Zanzibar party from gaining a majority in the Zanzibar parliament, thus weakening its autonomy in practice.

24 Memorandum of Settlement, 30 June 1986. See Article 371G of the Constitution of India, and compare Article 371A, relating to Nagaland, in which the double entrenchment is arguably stronger.

25 Constitution of the Ukraine (1996), Title X. The procedure for amendments to the constitution, set out in Title XIII, do provide some protection, but do not constitute double entrenchment.
26 Constitution of Moldova (1994), Article 111 (amended in 2003) and the 1994 Law on Special Legal Status of Gagauzia.
27 For more on this question, see M. Brandt, J. Cottrell, Y.P. Ghai and A. Regan, *Constitution-making and Reform: Options for the Process* (Interpeace, 2011), available at www.interpeace.org. This Interpeace publication is a practical and very comprehensive and detailed handbook very useful to mediators faced with needs for constitutional reform.
28 A. Regan, "External versus internal incentives in peace processes: the Bougainville experience", in *Accord* p.2, at www.c-r.org/our-work/accord/incentives/bougainville.php, (2008). The Bougainville peace process was largely financed by Australia and New Zealand.
29 A discussion of monitoring and verification can be found in von Hehn (see "Further reading" above), pp.94–98 and in particular with respect to third party roles, in Boltjes (note ii above), pp.36–43.
30 The arbitration under auspices of the Permanent Court of Arbitration was successful and the tribunal's decision was accepted and implemented by both sides. The conflict that erupted later concerned other issues, not the border dispute settled by this arbitration.
31 See W.J. Miles, "Adjudication of Intrastate Disputes: a Review of Possible Mechanisms" in Boltjes, (note ii above), pp.211–228.
32 A brief overview of the issues involved is contained in von Hehn ("Further reading" above), pp.109–116. It draws largely from S.L. Woodward, "Economic Priorities for Successful Peace Implementation" in S.J. Stedman, D. Rothchild and E.M. Cousens (eds), *Ending Civil Wars: The Implementation of Peace Agreements* (2002), pp.183–214.
33 See for a discussion T. Whitfield, *Friends Indeed? United Nations, Groups of Friends and the Resolution of Conflict* (USIP Press Books, 2007).
34 See for a detailed discussion W.J. Miles and D. Mallett, "The Abyei Arbitration and the use of arbitration to resolve inter-state and intra-state conflicts", *Journal of International Dispute Settlement,* Vol. 1, No. 2 (2010), pp.313–340.

Chapter 5: Tipping the balance? Sanctions, incentives and peace processes

1 See Mikael Eriksson, *Supporting Democracy in Africa: African Union's Use of Targeted Sanctions to Deal with Unconstitutional Changes of Government* (Stockholm: FOI, 2010).
2 In his Report of the UN Secretary-General to the UN Security Council (UNSC) on 29 December 2011, Ban Ki-Moon envisaged "closer interaction" between the AU Commission and the UN Secretariat in order to "assist the Security Council and the AU Peace and Security Council in formulating cohesive positions and strategies". This could include more informal communication between the UNSC and the AU's PSC and their Member States to develop "a common vision and coordinating action prior to the finalization of respective decisions". Nevertheless, the protocols for managing this strategic relationship continue to evolve. While the AU is interested in a more structured and formalised mechanisms for consultations, the UNSC, particularly the five permanent members, show preference for a more flexible and informal consultation process. The Institute for Strategic Studies also argues that the two organisations differ on which takes the lead on peace and security issues in Africa. While the AU seeks to lead in responding to these situations on the continent, the UNSC is concerned that deference to the AU could erode the Security Council's mandate (Institute for Strategic Studies, 2012).
3 According to Article 23(2) "any Member State that fails to comply with the decisions and policies of the Union may be subjected to other sanctions, such as the denial of transport and communications links with other Member States, and other measures of a political and economic nature to be determined by the Assembly." The articles particularly relevant for situations where the AU could decide to impose sanctions in cases of armed conflict include: Article 4(h): "the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity"; Article 4(o) "respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities"; and Article 4(p) "condemnation and rejection of unconstitutional changes of governments". According to Article 23(2), "any Member State that fails to comply with the decisions and policies of the Union may be subjected to other sanctions, such as the denial of transport and communications links with other Member States, and other measures of a political and economic nature to be determined by the Assembly".
4 Protocol Relating to the Establishment of the Peace and Security Council of the African Assembly of the African Union, Article 16.
5 Communiqué of the 178th meeting of the Peace and Security Council of the African Union, 13 March 2009. Details regarding the structure of the Sanctions Committee can be found in the *Ezulwini Framework for the Enhancement of the Implementation of measures of the AU in situations of unconstitutional changes of government in Africa* (2009), sections II C and II D.
6 Eriksson (2010), op. cit.
7 For further details, see Institute for Security Studies, *Enhancing the African Union Sanctions Regime* (Seminar Summary Report, 2009): available at: http://www.issafrica.org/uploads/28OCT09REPORT.PDF
8 Eriksson (2010), op. cit.
9 The classic logic of sanctions is consistent with Tom Schelling's distinction between deterrence and compellence: *deterrence* consists of credible threats aimed at preventing the target from doing something (with the response only triggered once the action has happened), and *compellence* consists of actions to induce the target to change their existing behaviour. Sanctions have been traditionally been conceived as a form of compellence.
10 For the conceptualisation and analysis of sanctions as a foreign policy instrument for compelling, constraining or signalling as a response to violations of international norms, see Francesco Giumelli, *Coercing, Constraining and Signalling: Explaining UN and EU Sanctions after the Cold War* (Colchester UK: ECPR Press, 2011).
11 Three international conference-based processes in Interlaken (1998–2001), Bonn–Berlin (1999–2001) and Stockholm (2001–2003) laid the foundations for these new types of sanctions. See, for example, David Cortright, and George Lopez (2000), *The sanctions decade: assessing UN strategies in the 1990s.* Boulder, Co: Lynne Rienner, as well as David Cortright and George Lopez, *Sanctions and the Search for Security: Challenges to UN Action,* A Project of the International Peace Academy (Boulder and London: Lynne Rienner Publishers, 2002). On the development of targeted sanctions, also see Alex Vines,"The effectiveness of UN and EU sanctions: lessons for the twenty-first century" *International Affairs* 88 (2012): 867–877 and Peter Wallensteen and Helena Grusell, "Targeting the right targets? The UN use of individual sanctions", *Global Governance* 18 (2012): 207–230.
12 Responding to early criticism of these measures and to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them, as well as for granting humanitarian exemptions, the Security Council, on 19 December 2006, adopted resolution 1730 (2006) by which the Council requested the Secretary-General to establish within the Secretariat (Security Council Subsidiary Organs Branch), a focal point to receive de-listing requests and perform the tasks described in the annex to that resolution. The Security Council took another significant step in this regard by establishing, by its resolution 1904 (2009) the Office of the Ombudsperson.
13 Peter Wallensteen and Helena Grusell (2012), op. cit., pp. 207–230.
14 Wallensteen and Grusell (2012) contrast these situations with contexts where counter-terrorism is the goal of individual sanctions. In those situations, it may be the case that freezing assets can directly prevent new terrorist attacks by depriving the individual(s) of necessary financial resources. In situations of armed conflict, however, the targeted individual's personal assets are unlikely to be decisive for war effort and therefore freezing individual assets is unlikely to have a direct strategic effect.
15 UN Security Council Document S/RES/1572 (November 2004).

16 Peter Wallensteen, Mikael Eriksson and Daniel Strandow, *Sanctions for Conflict Prevention and Peacebuilding: Lessons Learned from Côte d'Ivoire and Liberia (Department of Peace and Conflict Research,* Uppsala University, 2006); Wallensteen and Grusell (2012).
17 Most IGOs and countries maintain websites listing their embargoes. For a general database of arms embargoes, see http://www.sipri.org/databases/embargoes.
18 According to Control Arms (2006), from 1996 to 2006, 13 UN arms embargoes were in force yet none stopped the flow of weaponry to the embargoed countries or armed groups. Despite an obligation to enforce UN arms embargoes on armed groups and forces in Africa, individuals and companies operating in at least 30 countries were implicated in embargo busting, but only a few were successfully prosecuted.
19 Damien Fruchart, Paul Holtom, Siemon T. Wezeman, Daniel Strandow and Peter Wallensteen, *United Nations Arms Embargoes: Their Impact on Arms Flows and Target Behaviour.* A Report by SIPRI and the Uppsala University Special Program on the Implementation of Targeted Sanctions (2007): available at http://books.sipri.org/files/misc/UNAE/SIPRI07UNAEprelims.pdf.
20 See http://www.un.org/peace/africa/Diamond.html
21 David Cortright and George Lopez, Linda Gerber-Stellingwerf, Eliot Fackler, Joshua Weaver, *Integrating UN Sanctions for Peace and Security* (Sanctions and Security Research Program, 2010): available at http://www.sanctionsandsecurity.org/wp-content/uploads/Integrating-UN-Sanctions-for-Peace-and-Security.pdf.
22 Source: Anders Möllander, *UN Angola Sanctions – A Committee Success Revisited* (Department of Peace and Conflict Research, Uppsala University, 2009): available at http://www.pcr.uu.se/digitalAssets/112/112145_mollander_090326.pdf.
23 Aaron Griffiths and Catherine Barnes (eds), *Powers of Persuasion: Incentives, Sanctions and Conditionality in Peacemaking,* Accord 19 (London: Conciliation Resources, 2008).
24 For a detailed discussion, see Peter Uvin, *The Influence of Aid in Situations of Violent Conflict: A synthesis and a commentary on the lessons learned from case studies on the limits and scope for the use of development assistance incentives and disincentives for influencing conflict situations.* Paris: OECD/DAC Informal Task Force on Conflict, Peace and Development Cooperation, 1999); James Boyce, *Investing in Peace: Aid and Conditionality after Civil Wars.* Adelphi Paper 351 (London: International Institute for Strategic Studies, 2002); Jonathan Goodhand, *Conditioning Peace? The Scope and Limitations of Peace Conditionalities in Afghanistan and Sri Lanka* (The Hague: Netherlands Institute of International Relations, "Clingendael", 2006).
25 The first phase was prior to and during the political negotiations leading to the Belfast Agreement. The second phase was intended to help address key strategic priorities for consolidating the peace. For full description, see European Commission (2000).
26 Jonathan Goodhand, *Conditioning Peace? The Scope and Limitations of Peace Conditionalities in Afghanistan and Sri Lanka* (The Hague: Netherlands Institute of International Relations, "Clingendael", 2006).
27 See Mitchell, David. 2008. "Room for accommodation: incentives, sanctions and conditionality in Northern Ireland" in Griffiths and Barnes (2008), op. cit.
28 See Nathalie Tocci, 'EU incentives for promoting peace' in Griffiths and Barnes (2008), op. cit.
29 Griffiths and Barnes (2008), *Ibid.*
30 Griffiths and Barnes (2008), *Ibid.*
31 Griffiths and Barnes (2008), *Ibid.*
32 Anthony Regan, "External versus internal incentives in peace processes: the Bougainville experience" in Griffiths and Barnes (2008), *Ibid.*
33 Regan (2008), *Ibid.*
34 This section draws extensively on findings from an earlier project with Conciliation Resources for its Accord program on learning from peace initiatives (http://www.c-r.org/accord/incentives-sanctions-conditions). The author would like especially to acknowledge Andy Carl, Aaron Griffiths and Celia McKeon for their insights and collaboration.
35 See Catherine Barnes, Celia McKeon and Aaron Griffiths, "Introduction" in Griffiths and Barnes (2008), *op. cit.*

36 See Griffiths and Barnes (2008), *op. cit.*
37 For a more detailed discussion, see Whitfield's chapter in the AU Mediation Handbook Volume 1.
38 Barnes (2008), *op. cit.*; Meyer (2008), *op. cit.*
39 Wallensteen and Grusell (2012), *op. cit.*
40 See Mareike Schomerus, "International involvement and incentives for peacemaking in northern Uganda" in Griffiths and Barnes (2008), *op. cit.*
41 See Alex de Waal, "Dilemmas of multiple priorities and multiple instruments: The Darfur crisis" in Griffiths and Barnes, 2008, *Ibid.*
42 See also Laurie Nathan, "Failings of the DPA" in Simmons and Dixon (eds), *Peace by Piece: Addressing Sudan's Conflicts,* Accord 18 (London: Conciliation Resources, 2006).
43 Panels of Experts typical report on the implementation of sanctions regimes, as well as offering analysis on the nature of the conflicts, the exploitation of natural resources and the grounds for lifting sanctions (Boucher and Holt, 2009).
44 Rex Brynen, "Aid as carrot, aid as stick: the politics of aid conditionality in the Palestinian Territories" in Griffiths and Barnes (2008), *op. cit.*
45 Barnes, McKeon and Griffiths (2008), *op. cit.*
46 de Waal, in Griffiths and Barnes (2008), *op. cit.*
47 Sources: Philip Levy, "Sanctions on South Africa: What Did They Do?" *The American Economic Review,* Vol. 89, No. 2 (May 1999): 415–420; Barnes (2008); Meyer (2008), *op. cit.*
48 Interviewed in Griffiths and Barnes (2008), *op. cit.*
49 Eriksson (2011), *op. cit.*
50 McGovern (2008), *op. cit.*
51 Economic Community of West African States Moratorium on the Importation, Exportation and Manufacture of Small Arms and Light Weapons in West Africa adopted in Abuja on 31 October 1998 (S/1998/1194, annex).
52 UN Security Council Resolution 1343 (2001).
53 UN Security Council Resolution 1343 (2001).
54 UN Security Council Resolution 1408 (2002).
55 UN Security Council Resolution 1478 (2003).
56 Erica Cosgrove, "Examining targeted sanctions: Are travel bans effective?" in Peter Wallensteen and Carina Staibano (eds), *International Sanctions: Between Words and Wars in the Global System* (London: Frank Cass, 2005).
57 Wallensteen and Grusell (2012), *op. cit.*
58 See Arvind Ganesan and Alex Vines, "Engine of War: Resources, Greed and the Predatory State", in *Human Rights Watch World Report 2004: Human Rights and Armed Conflict.* Available at http://www.hrw.org/legacy/wr2k4/.
59 Wallensteen, Eriksson and Strandow (2006), *op. cit.*
60 Wallensteen, Eriksson and Strandow (2006), *op. cit.*
61 Nicole Itano, Liberating Liberia: Charles Taylor and the Rebels who Unseated him, ISS Paper 82 (Institute of Security Studies, 2003).
62 Wallensteen, Eriksson and Strandow (2006), *op. cit.*
63 Desirée Nilsson and Mimmi Söderberg Kovacs, "Breaking the cycle of violence? Promises and Pitfalls of the Liberian peace process", *Civil Wars* Vol. 7, No. 4 (Winter 2005): 396–414.
64 Itano (2003), *op. cit.*
65 UN Security Council Resolution 1521 (2003). Timber sanctions were lifted in 2006, with the government's commitment to transparent management of the country's forestry resources (SCR/8856). The diamond sanctions were terminated in 2007 (SCR/1753). The arms embargo was conditionally lifted in 2009 (SCR/1903), with States prohibited from giving military assistance to non-state actors in Liberia. The assets freeze remains in effect until the Security Council decides otherwise; however, the Council is to review the measures at least once a year.
66 UN Security Council Resolution 1521, paragraph 10.

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