

osloFORUM

Building Peace in 2013

Reflections and Experiences from the Oslo Forum Network



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Centre for
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Dialogue

Mediation for peace



NORWEGIAN MINISTRY
OF FOREIGN AFFAIRS

Centre for Humanitarian Dialogue

114, rue de Lausanne

Geneva 1202

Switzerland

t: + 41 22 908 11 30

f: +41 22 908 11 40

info@hdcentre.org

www.hdcentre.org

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Editors: Katia Papagianni, Sabina Avasiloe, Paul Dziaukowicz

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Contents

- 4 **Foreword**
By Espen Barth Eide
 - 5 **Introduction**
By David Harland
 - 7 **A Call for a European Institute of Peace**
By Carl Bildt
 - 9 **Enhancing the Social Capital for Conflict Resolution**
By Jonathan Cohen
 - 12 **Home-grown Peace in Mindanao and the Role of Third-Party Mediation**
By Teresita Quintos Deles and Marj Ibanez
 - 15 **The Transitional Bridge: A Challenge and Opportunity for Mediators**
By Nicholas Haysom and Sean Kane
 - 20 **Early Warning and Mediation: Key Components of the ECOWAS Vision 2020**
By Florence Iheme
 - 22 **The Five Kinds of Access: Five Conditions for Successful Mediation**
By Carne Ross
 - 25 **Beyond Mediation: Toward a Political Settlement in Afghanistan**
By Barnett R. Rubin
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Foreword

The last decade has seen a dramatic increase in peace-building and reconciliation efforts. Countries, NGOs, international organisations and individuals alike are investing more in this work than ever before. Norway is proud to be an important contributor.

The nature of conflicts is changing. We therefore need to adapt our thinking accordingly and develop new tools. We need research, we need meeting places, like the Oslo Forum, where we can gather to analyse and discuss issues openly. And we need courageous individuals.

During last year's Oslo Forum, the Irish singer Bono emphasised the importance of identifying partners for change. Without a de Klerk, he suggested, "there could have been no Mandela". I believe he is right. We need individuals, groups, parties on all sides who are prepared to take brave steps towards peace and look for possibilities for peaceful coexistence with their enemies.

But can we succeed?

Recent research shows a clear downward trend in the number of violent conflicts since World War II. Despite the rapid increase in the world's population, fewer people are now killed in armed conflict each year. Wars between states are now rare and few new conflicts are emerging. And when they do, we are better at dealing with them. During the past 20 years, in 80% of all resolved conflicts, peace was achieved through a political process.

All this is promising. But despite this progress, we are all painfully aware that we have a long way to go. Every single day people are killed, tortured, forced to flee their homes. Today's conflicts often appear in situations of 'neither war nor peace', as a result of unfinished nation-building. Sadly, these conflicts often affect innocent civilians, including women, children and the elderly. Are these the hardest conflicts to solve?

Look at Syria, where the international community has demonstrated an inability to take joint action. At the same time, we all ask ourselves: What can we do differently? Do we have the tools we need to deal with the complexity of today's conflicts? And how can we make sure that Syria is the exception and not the rule when it comes to the ability of the international community to stand together and find joint solutions to armed conflict?

Mediation efforts today tend to include many stakeholders. International organisations, states, NGOs and civil society all come to the negotiating table with their various strengths

and weaknesses. I have recently been closely involved in the negotiations between Colombia and the Revolutionary Armed Forces of Colombia (FARC-EP). After 50 years of conflict, the parties are finally talking to each other. We found that the best approach was to involve more countries as third-party facilitators, with Cuba and Norway at the forefront.

Many years of active Norwegian engagement in peace and reconciliation efforts has taught us that coordination is the key. Different events and channels of communication and dialogue will affect the overall outcome. In Myanmar we participate in broad-based capacity-building efforts and have provided immediate support to the ceasefire areas, together with several other donors and various NGOs. This will help to prepare the ground for a peace process led by the parties in Myanmar themselves.

Furthermore, in my experience, the importance of the sensitive and discreet dialogue needed to pave the way for more concrete conflict resolution efforts is often overlooked. These initial steps are often met with scepticism. But I am convinced that dialogue is the most effective tool in any peace effort. Dialogue has transformed many conflicts and prevented wars.

It is through dialogue with a neutral international actor that the strength of a rebel group's arguments can really be tested. Perhaps their claim to represent the entire opposition does not tally with the view of the outside world. And it is through dialogue that a government may realise that its position does not meet certain international standards. Dialogue forces the parties to rethink their positions and re-evaluate their real interests.

I am always hesitant to label something a success or a failure in peace diplomacy. Official rounds of negotiations may not prove any more successful than a back channel dialogue. But the breakdown of negotiations does not necessarily represent a failure. There will always be obstacles and setbacks along the road to a peaceful settlement, but these can also provide useful lessons and lead to new solutions.

So even though the trend is towards less armed conflict globally, and mediation efforts are increasingly sophisticated, we must not become complacent. Given the magnitude of the task, we must constantly strive to refine our methods and knowledge. I believe this publication is an important contribution to our work to promote peace.

Espen Barth Eide
Minister of Foreign Affairs, Norway

Introduction

In 2013 we celebrate ten successful years of the Oslo Forum. When we first started, the retreat was a small, almost marginal meeting of only seventeen mediators. Their practice was at the periphery of the international response to armed conflict.

A decade later, the Oslo Forum gathers more than a hundred peacemakers from around the world. The mediation field has evolved and has learned, playing an increasingly larger role in containing and resolving conflict. Outfits like the HD Centre were encouraged, for instance, when the Human Security Report Project published its findings late last year. Peace agreements are, in fact, much more successful in reducing armed violence than usually assumed, and even when they fail to secure lasting peace, they do save lives. Conflicts that reignite after the breakdown of peace agreements still see an 80 percent reduction in annual battle-death tolls, a more dramatic change, it seems, than for any other means of settling conflict.

The Forum has contributed to this positive development, building a community of dedicated peacemaking professionals, whose rich experiences, insights, mistakes and successes have helped sharpen our tools for preventing and ending violence.

Attracting a broad cross-section of key players in peacemaking, including mediators and negotiators, government officials, NGOs, and civil society, the Forum aims to improve mediation practice, build a community of conflict mediation practitioners and increase peer learning. We see it also as a laboratory for testing assumptions and ideas from diverse conflicts and regions, and as a safe venue for challenging commonly held preconceptions. Importantly also, the retreat has enabled peacemakers to initiate partnerships and projects.

As we embark on a second decade of the Forum, there is still, of course, much work to do. In Syria, the multiple internal groups and external actors have not been able to secure a diplomatic solution to the crisis. Meanwhile, radical Islamist control in northern Mali, intensifying violence in northern Nigeria, and rebel advances in the Central African Republic demand increased attention from the international community in 2013.

At the same time, the HD Centre's own experience in 2012 has shown that third party facilitation and concerted international support to homegrown peace processes can catalyze substantial change. For example, the peace talks between the Philippine Government and the Moro Islamic Liberation Front have led to the signing of a Framework

Agreement that seeks to establish a new autonomous Bangsamoro region by 2016. The process leading up to the Agreement has been groundbreaking in many ways, perhaps most significantly in its attempts to include conflict-affected communities in the consultation process leading up to the Agreement, and in the drafting of a Basic Law for the region. As one of the members of the supporting International Contact Group and its ad hoc coordinator, the HD Centre was in the privileged position of attending all the talks, and providing advice to the negotiating parties upon request. Its presence in the most troubled province of Sulu has also afforded the HD Centre the opportunity to help the Parties translate the provisions of the Agreement into realities on the ground.

“Peace agreements are, in fact, much more successful in reducing armed violence than usually assumed, and even when they fail to secure lasting peace, they do save lives.”

In Kenya, partnering with the National Cohesion and Integration Commission, we facilitated the signing of the Nakuru County Peace Accord. Signed by Elders of the Kikuyu and Kalenjin, as well as Elders from the other communities in the County, the agreement includes a code of conduct that calls on all who hold public office to build trust, prevent violence and ensure no community is permanently excluded from governance and state functions. In 2012, the HD Centre also made great headway around some particularly intractable issues in Somalia and South Sudan.

As the nature of armed conflict evolves, the Oslo Forum will continue to play an important role in generating suitable responses. Today's conflicts are characterised by increasingly interlinked security threats and successful mediation requires that interventions be focused, coherent, and complementary in nature. The Oslo Forum is key to realising that goal, through its community-building function.

This publication, a fascinating collage of reflections from the Oslo Forum network, is an important step in that direction. We have asked a few Oslo Forum participants who have extensive experience in the field to share with us what

preoccupies them most currently, and what they think are the main challenges we will face in 2013. Their contributions are diverse and enlightening, encouraging greater focus and debate around the factors that account for the successes and failures in our work.

At the outset, Carl Bildt calls for the creation of a European Institute of Peace to engage in mediation and dialogue with greater liberty than the regular diplomatic instruments at EU's disposal. Also on the need to re-conceive political space, Jonathan Cohen argues that we must look beyond the negotiating table, to understand and deal with the myriad of factors and actors that enable peace processes to cohere.

In the Philippine peace process, Teresita Quintos Deles and Marj Ibanez reflect on the recently-signed Bangsamoro Framework Agreement and generously share with us insights from a process which ends a 40-year rebellion and lays the groundwork for enduring peace. On the other hand, Nicholas Haysom and Sean Kane review the transitional arrangements put in place after the Arab Spring in Tunisia, Egypt, Libya, Yemen and elsewhere, drawing attention to the fact that the choices made by negotiators can complicate the democratic development of these countries or help produce a sustainable social compact.

In the ECOWAS region, Florence Iheme reminds us that, in spite of laudable progress, much remains to be done to fully empower local communities to identify threats, respond to tensions and prevent violent conflict. In another call to action, Carne Ross makes a strong case for redressing common imbalances in mediation processes, arguing that a lack of access to negotiations, legal expertise and the wider diplomatic system almost invariably sets obstacles to peace.

Finally, on the quest for a political settlement in Afghanistan, Barnett Rubin maintains that the diplomatic architecture of the various processes has not done away with the major obstacles to peace, but that areas of common ground are emerging.

I would like to express my gratitude to all these contributors who have been kind enough to share their insights and unique wisdom, as well as for their ongoing contributions to the Oslo Forum community and the mediation field in general. As we look forward to the next Oslo Forum in June 2013, let us use the year ahead to put their insights and collective expertise to practical use in the pursuit of peace.

David Harland

Executive Director, Centre for Humanitarian Dialogue

A call for a European Institute for Peace

Carl Bildt

“The European Union and its forerunners have for over six decades contributed to the advancement of peace and reconciliation, democracy and human rights in Europe.”

Nobel Peace Prize committee

From the outset, the European Union (EU) has been a project of peace. The devastation and suffering of World War II demonstrated the need for a new Europe. Since then, well-aimed efforts and confidence-building measures have turned historical enemies into close partners. Through EU enlargements, new violent conflicts have been averted as prospective members have had to manage internal disputes and build robust institutions. The EU has developed into a global actor, engaged in conflicts throughout the world, using its instruments of diplomacy, development assistance and crisis management. The awarding of the Nobel Peace Prize in 2012 testifies to the EU's remarkable achievements and reminds us of the important role that the EU can, and is expected to, play.

But for the EU to fulfill its potential as a mediator in conflicts and crises, a capacity gap still remains to be filled. Engagement with proscribed actors and an ability to rapidly deploy experts in mediation support both need to be strengthened. The capacity to gather experience from mediation efforts and make it easily available to policy makers also needs to be improved. Today's and tomorrow's conflicts – and the populations affected by these conflicts – require more from Europe. That is why we have put forward the idea of a European Institute of Peace.

Such an institute would work as a European entity, equipped for, and able to engage in, mediation and informal dialogue with greater liberty than the regular diplomatic instruments at the EU's disposal. Such an institute would be independent, but would have links to EU institutions and would complement the formal mediation capabilities of the EU. The European Institute of Peace could explore avenues for negotiation that the EU cannot, and it could feed ideas into formal peace negotiations carried out by the EU. The institute could help keep channels of communication open with the whole spectrum of actors in a conflict. It could also assist in bringing together European mediation experience with expertise from state and non-state actors and translate it into so-called best practice.

The need for a global, engaged and committed Europe is here so stay. We cannot expect conflicts to just go away. In recent years, the number of armed conflicts has risen by nearly 20 per cent. The world has witnessed an increase in the most deadly conflicts, with more than 1,000 battle-related deaths in state-based conflicts in 2009. Almost all conflicts today are fought within states – governments fighting armed opposition groups, or various non-government groups fighting each other. These conflicts are complex in terms of actors and issues, and may be affecting socie-

H.E. Minister Carl Bildt is currently the Minister for Foreign Affairs for the Swedish Government, a post he has held since 2006. His posts in the mediation of armed conflict include the UN Secretary-General's First Special Envoy for the Balkans from 1999 – 2001; the High Representative of the International Community in Bosnia and Herzegovina for reconstruction and the peace implementation process; the European Union's First Special Representative for Former Yugoslavia, and Co-Chair of the Dayton Peace Talks on Former Yugoslavia. He was also the Adviser to the European Space Agency (ESA), Adviser to the Internet Corporation for Assigned Names and Numbers (ICANN), and a Member of the International Balkan Commission.

ties at local, regional and transnational levels. This complexity, in turn, poses challenges for third-party involvement – whether by the EU or some other actor. Neither military interventions nor aid assistance on their own can resolve such conflicts. Political solutions are, and will always be, necessary and mediation will often be called for, in particular when armed opposition groups or non-government groups are involved. We have seen this in cases such as the Provisional Irish Republican Army (IRA) in Northern Ireland and the Free Aceh Movement (GAM) in Aceh.

Mediators, therefore, have key roles to play before, during and after a negotiated political settlement. Firstly, mediation is often needed before negotiations can even start. Getting to the negotiation table can take considerable time. In the case of Northern Ireland, for example, it took ten years. Here, informal backchannel communication through intermediaries was used to gather a broad coalition of parties, including the IRA, a proscribed terrorist organisation. Through many years of mediated backchannel communications, parties' perceptions were changed and they began to consider that concessions were necessary and that the time was ripe to settle.

Secondly, during negotiations, the mediator is able to manage the process, provide advice on the substance of the issues, serve as a guardian of documents and contribute to outreach work to promote a peace treaty. In the 2005 Aceh peace process, sequenced consultations, starting out with a small circle of people, were subsequently enlarged to include the wider public. Evidence from Liberia and other cases also shows that the inclusion of local civil society in the peace process increases the sustainability of peace agreements.

Thirdly, after negotiations, a third party may be needed to support the implementation of the agreement. Forty per cent of peace settlements relapse into war within a five-year period. In my previous capacity as High Representative in Bosnia and Herzegovina, after the conclusion of the Dayton Peace Accords, I was faced with the attitude that the road to implementation would be straight and simple. Instead, peace in Bosnia was, in many respects, just a continuation of war by other means. The political aspirations that had led to war had not essentially changed. In light of this and other cases, I believe that a third party may be needed to monitor the adherence to an agreement. A third party can also assist in the process of working out the details of peace that for practical reasons cannot be included in a treaty.

There are advantages to a mediation approach marked by informality and an openness to engaging with all relevant actors over a longer period of time. Before and during talks, such an approach may help to encourage flexibility and non-binding exploration. Backchanneling can, moreover,

provide deniability and political cover in the face of constituencies or rival groups threatening to overthrow 'traitors to the cause'. Backchanneling can help to sidestep formal negotiation prerequisites, such as disarmament, and also help build coalitions for peace.

“Political solutions are, and will always be, necessary and mediation will often be called for, in particular when armed opposition groups or non-government groups are involved.”

At the same time, not all negotiations should involve backchannel communications. When the time comes for actual peace talks, the public needs to be aware of them. Consultations and outreach measures in support of the agreement-to-be need to take place. If not, the risk of spoilers disrupting the peace talks or treaty implementation is substantive.

Again, we cannot expect conflicts to just go away. While some conflicts will be resolved, new conflicts are likely to emerge. While there is a need to identify potential conflicts on the horizon and to shape our response to current conflicts, it is equally important to refine our instruments and institutional set-ups. Conventional government-centered diplomacy, with its focus on formal arrangements, is clearly insufficient. Informal backchannel communication, the ability to engage with all parties concerned, and the demonstration of long-term commitment cannot always be addressed within bureaucratic structures.

To improve the capacity of the EU to deal with the certainty of conflict, the Council of the European Union has identified the need to strengthen its early warning system, to link early warning to early action, and to build partnerships with other actors in conflict prevention, conflict mitigation and conflict resolution. The European External Action Service has to play the primary role in this respect. A European Institute of Peace would, however, be an important – even necessary – partner in this endeavor.

That is why Europe needs a European Institute of Peace.

Enhancing the Social Capital for Conflict Resolution

Jonathan Cohen

Progress in resolving conflict can seem like a waltz with unwilling partners – one step forward, one step back, one step to the side. Often a lack of communication means that efforts are pulling in different directions. It rarely looks graceful. While the continued violence in Syria seems to defy the efforts of mediation and reminds us that every year violence erupts in unexpected ways and in unexpected places, we should not lose sight of the fact that there are contexts where mediation is working. The field of conflict transformation has developed significantly over the past two decades. The world suffers fewer armed conflicts and less conflict-related violence than in the past. More conflicts are settled through negotiation and inclusive dialogue rather than through military means. Increasingly, experience is showing us that conceptions of peaceful political settlements which emanate from the negotiating table are too limited. A good negotiation process leading to a signed agreement is an essential element of a peace process, but other stages and processes are equally critical. There is a growing acknowledgment of the need to provide political space for the grievances and claims of groups (often minorities) with divergent perspectives. To be sure, there are still immense challenges in the quest to provide just and lasting settlements to protracted armed conflict and violence around the world. Despite progress, we all need to get better at building peace.

One component of this is undoubtedly improving mediation and mediation support. The UN Secretary-General's 2012 report on *Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution* is an example of the increased attention being given to such efforts. The report and accompanying guidance notes go some way towards moving the debate beyond clichéd notions of power mediation, or the deployment of a prestige mediator to bring together conflict parties to agree an end to fighting and to work towards a common and peaceful future.

Skilled mediation, that is politically astute and professionally competent, is undoubtedly critical in supporting processes of negotiation. But mediation efforts that are not attentive to political processes, however well conducted, will yield limited results. In this light, the UN report's positive language around the issue of inclusivity, and its recognition that there are multiple actors involved in peacemaking, is important. If those at the negotiating table are to have the legitimacy needed to construct the compromises that are inherent in any peace agreement, it is essential for the process to have legitimacy. For this to be the case, those at the negotiating table need to be cognizant of and engage with the myriad of other factors and actors that enable peace processes to cohere. Parties need support in getting to the table, in

Mr Jonathan Cohen joined Conciliation Resources (CR) in 1997 and developed the Caucasus programme focusing on dialogue, confidence-building and media initiatives to promote peacebuilding in relation to the Georgian-Abkhaz and Nagorny Karabakh conflicts. In 2008, he became Director of Programmes overseeing CR's regional programmes in the Caucasus, West Africa, East Central Africa, the Philippines, Fiji and India/Pakistan in relation to Kashmir. Previously, he served as Deputy Director of the Foundation on Inter-Ethnic Relations in The Hague, working with the High Commissioner on National Minorities of the Organization for Security and Cooperation in Europe. Before that he worked for International Alert and the Peace Research Institute Oslo. Jonathan Cohen has acted as a consultant to the United Nations Volunteers, the Heinrich Boell Foundation, the Berghof Foundation, the Institute of War and Peace Reporting, and Amnesty International. He has also taught peace and conflict studies at the London School of Economics.

being confident of their capacity to negotiate, and to derive something from the process for their communities (and/or themselves). In the face of violence, which is often chaotic and beyond the control of homogeneous armed forces (whether state or non-state), mediation can struggle to keep pace with the way violence transforms and reinvents parties involved in conflict. It can also struggle to connect the negotiating table to the wider processes of change that are essential if the talks are to be more than a mere respite in a cycle of violence. In emergencies or high intensity conflicts, mediators are right to focus on stopping the fighting and this will usually require a mediator with muscle. But more is needed if this is to exceed a temporary stay of violence, and to be part of a foundation for a polity and society that is resistant to violent conflict.

Complex mediation structures all too often come into being to balance the interests of states circling around a conflict and not just the concerns of the parties. But this can also serve to paralyse processes, which are perpetuated out of a desire not to lose a forum of engagement rather than a belief that this forum can deliver. The experience of the Minsk process and the Geneva talks, both seeking to resolve long standing conflicts in the Caucasus, typifies this dilemma. But these processes also highlight that mediation, however skilled, well designed and well intentioned, is always constrained by the interests and ambitions of the conflict parties. And when processes are stuck it is crucial to expand the parameters and think beyond the confines of the negotiating table, the top-level parties and the mediators. The Georgian-Abkhaz context is a good example of civic peace initiatives expanding the parameters of debate by generating joint films, research and advocacy across a conflict divide. Informal dialogue processes were not able to prevent a resumption of hostilities in 2008 but they have sustained relationships, been incubators of new ideas, and continue to challenge political leaders and societies to reflect on long-term challenges.

“The norms and standards established over the past decade in regard to women, peace and security are no more than a starting point.”

If the efforts of formal mediation processes, including discreet and confidential processes where necessary, are insufficient, we need to focus on how we can construct a wider architecture that makes such processes successful.

There is a trend towards more sophisticated mediation and conflict transformation architecture with strong local ownership as well as careful and strategic international support. A good example of a more creative approach is the hybrid form of mediation support seen in the Philippines. The signing of a Framework Agreement in October 2012 between the Government of the Philippines and the Moro Islamic Liberation Front saw a mediation process supported by an International Contact Group (ICG) which was, for the first time, comprised of both states and international non-governmental organisations (INGOs).¹ The diplomatic leverage of states was accompanied by the flexibility of INGOs with long-standing relationships with key interlocutors, as well as with connections to civil society and social movements. While the process did not have an open door for civic actors, the engagement of international civic organisations did create a bridge of sorts.

One area where the process, like most peace processes, was lacking was in the participation of women. Only a couple of women took part in the ICG, both representing an INGO. Men also dominated the parties at the table. However, at the beginning of the crucial implementation phase the Philippines Government panel is now chaired by Professor Miriam “Iye” Coronel-Ferrer, who stands alongside Teresita “Ging” Quintos-Deles, the head of the Government’s various peace efforts. It is frequently observed that it is important to listen, and respond, to the diversity of women in conflict-affected areas, including finding ways to provide a place for them at the negotiating table. This needs to go beyond mechanistic observation of women’s issues or men’s issues, or the number of women in a process. The norms and standards established over the past decade in regard to women, peace and security are no more than a starting point. If socially important constituencies are not present, the process’ durability after any agreement will be weaker. Moving from policy to practice remains a challenge and developments on the ground in conflicts over the world have not met expectations in this regard. Often this is limited by the very language of ‘women, peace and security’ rather than the recognition that this is a springboard from which to confront deeper questions about gender roles in the generation of conflict, the potential to transform it, and the sort of societies that can be built after violent conflict.

Most countries afflicted by violence struggle with governance challenges and there is little tradition of civil society holding power to account. While civic initiatives can be dynamic components of change, civil society should not be idealised – it can be divided and rife with prejudice, pushing politicians forward to creative solutions or holding them back with opposition to concessions. A strong analysis of the composition of civil society is, therefore, essential but mediators who parachute in to a context are rarely re-

sourced or, indeed, skilled to do this. Therefore, creative means need to be found to identify and support those within conflict contexts, peacebuilders and insider mediators, who can feed insights into formal processes. Such people are able to nurture relationships across divides (within their own communities and beyond), understand risks, and enrich the formal peace process, so it gains traction in the long-term. In intractable contexts, a multiplicity of engagements can mean that, if there are blockages in the formal process, ideas can be generated or relationships sustained in other contexts. Such efforts, often led by civic peacebuilding initiatives in the shadow of state or intergovernmental mediation efforts, mean that society has the capacity to ensure that, when the tectonic plates of a conflict shift enough to create opportunities to build peace, there are individuals or constituencies able to seize them. These efforts and actors are the social capital for resolution – essential if agreements are to be reached and sustained.

“Demystifying the negotiating table and travelling the multiple paths that need to be pursued to consolidate and sustain peace is a challenge that pushes beyond the norms of mediation.”

As we look ahead to 2013 and the many conflicts confronting national and international actors, we need to ask how to build negotiations and peace processes that are less elitist and more able to meet the needs and expectations of those most affected by conflict. Past experience has all too often seen elite-level mediated negotiations fail because leaders could not sell the outcomes and societies would not buy the compromises – the failure of the 2001 Key West talks between the presidents of Armenia and Azerbaijan are a potent case in point. Negotiations, and usually mediated negotiations, need to be accompanied by efforts to generate wider participation in the process as a whole. Structuring and sequencing this in fluid conflict contexts that often pay little heed to top-down orchestration will never be easy: balancing confidentiality, transparency and accountability needs careful choreography. But mediators need to heed this challenge and get beyond the weapon-wielding stakeholders to those who

have soft power or limited power in order to increase the legitimacy of decisions taken at the negotiation table. This can also improve the prospects for the implementation of any agreement. Resourcing implementation is what determines whether an agreement works or fails, as much as the quality of its content. Support to mediation, therefore, does not just stop at the signing of an agreement, though the role and character of such support transforms as a new phase is entered.

There is a gap between the theory and practice of mediation. In an ideal world, a mediator should be a professional and disinterested person with strong institutional support and political backing. It seems that the exception is the rule and, more often than not, mediators have interests in particular outcomes and unequal relations with the conflict parties. They rarely have either specific mediation experience or strong professional support. The innovations we are seeing in the field of mediation support and civil society-led peacebuilding are in response to these challenges. Demystifying the negotiating table and travelling the multiple paths that need to be pursued to consolidate and sustain peace is a challenge that pushes beyond the norms of mediation. If we fail to grasp this, we are limiting our ability to play the creative and transformative roles which are essential in supporting people to make the transition from violence to politics as a means to end their conflicts.

1 Under Malaysian facilitation, the ICG was comprised of representatives from the Governments of Japan, Saudi Arabia, Turkey and the United Kingdom, alongside non-governmental organisations – The Centre for Humanitarian Dialogue, Conciliation Resources, Muhammadiyah and The Asia Foundation.

Home-grown Peace in Mindanao and the Role of Third-Party Mediation

Teresita Quintos-Deles and Marj Ibañez

It is difficult to be writing at this time, in the midst of the recent and still ongoing developments in the Philippine peace process. Aside from the whirlwind of meetings, writing and consultations we have had to undertake in preparation for the challenging work that continues to face us at the peace table and on the ground, it is also difficult to commit into words insights and thoughts about an unfolding process that has more lessons to offer than most of us – home-grown peace advocates and practitioners – have come to learn and realise during our lifetimes. Nevertheless, it is both timely and essential to make an effort to write about the process for others to deliberate on because of the relevance of the experience.

On October 7, 2012, the Government of the Philippines (GPH) and the Moro Islamic Liberation Front (MILF) reached

a historic agreement after 15 years of negotiations, the latest two (most intense) years of which have been under the administration of President Benigno Simeon Aquino III. The Framework Agreement will give birth to a new autonomous political entity whose name, Bangsamoro, is characterised by President Benigno Simeon Aquino III as a name that “symbolizes and honors the struggles of our forebears in Mindanao” and “celebrates the history and character of that part of our nation”. The Bangsamoro Framework Agreement officially establishes a common roadmap, adopted by both parties, to end the 40-year rebellion in Mindanao in Southern Philippines, including the outlying islands of Basilan and Sulu.

Although the details of this peace agreement still have to be discussed and the more difficult work has only just begun,

Secretary Teresita Quintos Deles’ path as peacemaker illustrates a full complement of citizens’ and civil society advocacy with that of civil service and governance, towards achieving a just and lasting peace. She has pioneered, stewarded and provided leadership to numerous national coalitions, citizens’ formations, community processes and international linkages and initiatives. These have covered issues of conflict management and transformation, constituency-building for peace, poverty reduction, sector and community social reform agenda building, addressing legacies of authoritarianism, political and governance reforms, and women empowerment. She joined government as a member of the Arroyo Cabinet as Lead Convenor and Secretary-General of the National Anti-Poverty Commission from 2001 to 2003, and as Presidential Adviser on the Peace Process from 2003 until her resignation on 8 July 2005. She returned to the private sector and co-founded the International Center for Innovation, Transformation and Excellence in Governance. She served as the Managing Trustee and as Focal Trustee for Peace and Security Sector Governance issues. Secretary Deles has returned anew to government service with her reappointment as Presidential Adviser on the Peace Process last 1 July 2010, by President Benigno S. Aquino III.

Ms Marilou (Marj) Ibañez has twenty one years of experience in social development in the NGO community and government. She is currently the speech writer of Secretary Teresita Quintos-Deles, Presidential Adviser on the Peace Process (PAPP). She represented the PAPP in the initial stages of the negotiations for the closure of the peace agreement with the Cordillera Peoples’ Liberation Army (CPLA) and the RPMP/RPA-ABB (an armed break-away group of the New People’s Army of the Communist Party of the Philippines). The negotiation with the CPLA successfully led to a signed closure agreement, while the negotiation with the RPMP/RPA-ABB is positively leading to another final peace agreement by 2013. She is currently providing technical support in the development of a framework for the disposition of arms and forces in these peace tracks.

when it was signed on October 15, 2012, it was undoubtedly the only good news about a real and compelling success in peace negotiations during the year. It could have a significant impact on the substance and direction of peacemaking in this part of the world.

The fact that mediation by the Malaysian facilitator, Tengku Dato'Abdul Ghafar, helped to decisively move the process forward means something in terms of the significance of mediation, at least to this particular peace process. A Philippine panel member (and now panel chair), Miriam Coronel-Ferrer, has commented on how Tengku Ghafar would use metaphors whenever negotiations between the two panels hit a snag. During the general assembly of the MILF in Camp Darapanan in July 2012, he declared that the "two panels are now on the same page – soon they will be on the same paragraph, reading the same lines." In the longest meeting between the two panels from August 2 to 8, 2012, Tengku Ghafar was said to have commented, "This is preparation for a wedding. The two families are still negotiating a dowry." (Interestingly, Professor Coronel-Ferrer also commented that President Aquino was said to have mused after the signing ceremony in Malacanang: "This must be how it feels after getting married." President Aquino is a bachelor.) In a gesture, arguably unprecedented within the Association of Southeast Asian Nations, President Aquino generously shared the platform with the Malaysian Prime Minister and openly expressed appreciation for Malaysia's crucial role as a third-party facilitator of the talks.

The role of mediation was truly important, but the peace process was also open to friends of the process in both the international and local communities. This helped tremendously given the cynicism which had built up over the years of intermittent negotiations, too often disrupted by the outbreak of armed hostilities.

It has been observed that the Philippines has been more welcoming to international involvement in its peace process than any other country in Asia. The peace process in Mindanao has involved nine countries (Malaysia, Brunei, Indonesia, Japan, Libya, Norway, Saudi Arabia, Turkey and the United Kingdom), two international organisations (the European Union and the Organization of Islamic Cooperation), and four international non-governmental organisations in various levels of its peace architecture. The immediate and overwhelming messages of support from the international community after the signing of the Bangsamoro Framework Agreement will go a long way in boosting the morale of the parties and stakeholders who do feel the heavy weight of the challenge ahead.

Philippine civil society, too, has no doubt helped to keep the process responsive, accessible, creative and accountable. Despite limited resources, they have managed to

keep going with inter-religious dialogue initiatives, civilian monitoring mechanisms, humanitarian assistance and support, and bridging leadership activities on the ground and at higher levels. Bangsamoro women, in particular, have been growing and expanding in order to sustain the basis for hope of a peaceful and lasting resolution of the age-old conflict. They continue to keep watch over the process and have effectively linked with their international counterparts for support and assistance.

“Although the details of this peace agreement still have to be discussed, it could have a significant impact on the substance and direction of peacemaking in this part of the world.”

Most importantly, the local stakeholders helped to keep the environment conducive, positive, and stable in terms of the peace process. It has not been unusual to learn about local and national politicians deciding to cross party lines for peace. The business sector recognised the importance of the process and has been openly supportive as they continue to hope that peace will eventually translate into investments, jobs and more economic opportunities. The bishops, the ulamas, the academics and the local communities have joined in the broader objective of building a constituency for peace, making full use of the space available for their leadership and involvement.

As the Philippine Government and the MILF proceed to a new phase of working as partners in implementation, they become more acutely aware that the agenda at hand concerns others as well as them. They have made a commitment to the Filipino nation and the global community. They are, therefore, prepared to create processes that are consultative and inclusive, to reach out to as many groups and sectors as possible.

After all, the importance of a Framework Agreement is to trigger a national debate where every Filipino can participate and register their opinion. Dean Marvic Leonen, Chair of the GPH Panel until his appointment to the Supreme Court in November 2012, hopes that the national debate will be able to expose and examine questions and fears that are foremost in the mind of the public. The panels have

set out to talk to the Congress, provincial governors, mayors, heads of barangays and their legislative councils, as well as local communities. They are determined to reach out to people – beyond those that have already made their stand for peace known – to the people in Manila, in the Visayas and in other regions through broader communication platforms.

Finally, the mediation by women at the Track 1 level is a significant development that definitely needs to be mentioned. This time, they are not only working behind the scenes, but they are sitting at the table and directly engaging and influencing the discourse. There are two women on the side of the Government – namely, Miriam Coronel-Ferrer and Yasmin Busran-Lao. For the first time since peace talks between the GPH and the MILF started in 1996, we have a woman chief negotiator, with the appointment of Professor Coronel-Ferrer to the position in December 2012. The GPH panel secretariat is headed by a woman, Iona Jalilali, and our legal team is led by Johaira Wahab, a Bangsamoro woman who is only 27 years old. On the side of the MILF, it remains an all-male panel but, because of the outcry of women's rights advocates, the MILF designated two women consultants – one of whom, Raissa Jajurie, carried more than her fair share of the workload in the negotiating room. We choose to name them now because it is time for women to be acknowledged.

“It has not been unusual to learn about local and national politicians deciding to cross party lines for peace.”

Even as we celebrate the hope engendered by the signing of the Framework Agreement, we know that the challenges ahead remain formidable. Work on completing four Annexes which, together with the Framework Agreement, will constitute the Comprehensive Peace Agreement, is ongoing. The task is not easy as the Annexes are supposed to fill out the missing details on power-sharing, wealth-sharing, normalization, as well as transitional arrangements and modalities.

As Professor Coronel-Ferrer said in her opening statement at the start of the ongoing GPH-MILF 35th Formal Exploratory Talks (January 21–25, 2013): “Do expect that we will get worked up in the most minute of details. Do expect that we will once again tangle with words and ruffle emotions.” But she also asserts, “our goals have remained the

same: (1) To establish a Bangsamoro government that will enjoy the blessings of meaningful political and fiscal autonomy. (2) To get to this end through a peaceful transition that will enable the MILF to test and prove its brand of leadership, jump-start the socio-economic development in the communities, and forever still the guns in the erstwhile conflict-affected region. (3) To achieve healing, reconstruction and the human security of the peoples, groups and sectors in the region.”

In the end, the greatest challenge is still with us and mediators, international groups and supporters should be able to understand and support that. Local ownership is important. It is our people that will make the peace which they will call their own, and it is us who will suffer most from the risks and the dire consequences of our decisions and actions should we go astray. It is a commitment that comes from us, from our political leader, President Aquino who declared:

“We are committed to giving the region its rightful share, not just now but each and every time, confident that it will redound to the benefit of all citizens, and will not just line the pockets of a very select few... We will give our people what is truly due to them: a chance to direct their lives towards advancement in a democratic, peaceful, and safe society.”

The Transitional Bridge: A Challenge and Opportunity for Mediators

Nicholas Haysom and Sean Kane

The Arab Spring has reminded us of the importance of properly understanding the tasks, pace and sequencing of political transitions. Following the heady days of Tahrir, Egypt has become a sobering study of an incoherent transition. To varying extents, Tunisia, Libya and Yemen have also faced questions as to the viability of the choices made in their own transitions.

With their attention captured by the imperative of ending armed conflicts and competing visions of the new state, mediators and stakeholders alike often overlook the importance of the transitional period that forms the bridge between the two. Yet transition is a time of institutional vacuum and great uncertainty – perhaps the most challenging period in the building of a new democracy. During transition, systemic challenges on the political, security, and economic fronts are likely to coexist simultaneously. At the same time, popular expectations of a democratic dividend will be soaring. Moreover, many of the key tasks of

the transition – such as elections and constitution-making – are inherently controversial and often divisive.

While much can go wrong in a transition, it is also a time of great opportunity and creativity if approached correctly. From the standpoint of the mediator, the charge is to avoid conflating the tasks of the transition with the final agreement on the construct of the new state.¹ The overriding focus of negotiations on transitional arrangements should be on how they can help secure the conditions of peace and how they provide a *process* to produce a sustainable social compact in a divided society.

The ongoing democratic transitions in the Middle East region illustrate the complex choices which those negotiating a future Syrian transition may be forced to navigate as early as 2013. Given the regional sectarian overlay to its vicious internal conflict, Syria is likely to face the most challenging transition of them all. The wholesale societal

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Mr Nicholas Haysom (haysom@un.org) is the United Nations Deputy Special Representative of the Secretary General for Political Affairs in Afghanistan. He was previously the Director of Political Affairs in the Executive Office of the Secretary-General and has worked on political transitions in Iraq (where he headed the United Nations Office of Constitutional Support), Sudan, and Burundi. Mr. Haysom was also closely involved in constitutional negotiations in his native South Africa, where he subsequently served as Legal Advisor to President Nelson Mandela.

Mr Sean Kane (skane@alumni.princeton.edu) was the Benghazi Representative and Deputy Team Leader for Libya at the Centre for Humanitarian Dialogue during 2011 and 2012, where he focused on promoting dialogue among Libyans on their political transition and regularly travelled to Egypt and Tunisia. He was previously based in Baghdad with the United Nations advising Iraqis on their constitutional review and currently works at the United Nations Assistance Mission in Afghanistan.

deconstruction that Syria is undergoing means that it will have little margin for error in any transitional agreement.

The Transition as a Bridge

We refer to the period between the end of the old order and the coming into being of the new enduring social contract as the transition. It follows that a transition is a bridge between the circumstances which prevailed during the conflict or old order, and the constitutional arrangements which will govern the new state. This bridge must be structurally sound because transitions are inevitably high-stake ventures. Their very temporariness is, however, a real advantage to the mediator in search of creative solutions. It allows for compromise and special rules for participation that might not ordinarily be acceptable under electoral democracy. This flexibility can be vital in buttressing the bridge.

Through this lens, the paramount tasks of transitional arrangements are threefold. Firstly, to hold society in place under volatile conditions. Secondly, to guarantee the process of transition and render it irreversible. Finally, to complete the tasks necessary to form the transitional bridge. These usually include elections and constitution-making, which can either contribute to nation-building or may polarize societies. If handled in the wrong way, the political transition in a divided society can become a daily referendum on identity.

Who Supervises the Transition ?

The starting question for any transition is: who should be responsible for managing the process? Given the fluidity of transitions there can be no clear-cut templates, but our experience suggests three broad approaches.

The first approach empowers the existing authorities to implement the transition. This route has the potential benefit of expediting the transitional process by placing responsibility for it with those actors who have the capacity to implement it and who can be held accountable by the international community. But this choice runs the risk of transferring legitimacy to the old order without diminishing its control. Historically successful in South Africa's democratic transition, this approach has largely been rejected by popular movements during the Arab Spring. While not necessarily making a deliberate choice to do so, Egypt came closest to this model.

To maintain credibility, this route normally requires another powerful and credible mechanism to supervise the implementation by the old order. Authorities in Bahrain and Syria have for example cynically and unsuccessfully made cases

for government-run transitions. Even in Morocco, the top-down constitutional reforms granted by King Mohammed VI in June 2011 are increasingly criticized for not touching the paramount powers of the monarchy.

In contrast, the power-sharing approach prefers the immediate participation in government of factions excluded by the previous regime. Under this route, inclusive interim institutions force the parties to take joint responsibility for managing the transfer of power. But this type of transition may stagnate because of the need for consensual decision-making. The clearest example of this approach during the Arab Spring is Yemen, where the interim cabinet is evenly divided between the government and the opposition, and parliamentary decisions are made by consensus. The International Action Group for Syria's Geneva Communiqué also calls for a transition supervised by a neutral transitional authority that "could include" members of the present government, opposition and other groups.²

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daily referendum on identity.”

The third approach insists on the expulsion of incumbent leaders and on vetting the government bureaucracy for ties to the former regime. It usually follows an unambiguous overthrow of the old order. This approach can provide a 'clean break' with the past, but it can also be polarizing if implemented in a partisan fashion (as with de-Baathification in Iraq). In the Arab Spring, authorities in Libya and Tunisia most closely followed this route of lustration. The picture has proved far more complicated in Egypt, while the "de-Salehification" of the military and civilian structures in Yemen risks degrading the elite power-sharing agreement underpinning its transition.³

In any of these scenarios, transitional arrangements may make a distinction between the transitional government and the authorities supervising it. This can be addressed by an inclusive 'supervisory' committee comprised of a broad range of actors. Such an inclusive supervisory mechanism can allow for necessary amendments to the agreed arrangements – an important consideration. This type of broadly accepted supervisory body was successfully created in Tunisia.⁴ In Egypt, the establishment of an interim presidential council and non-partisan governing authority was mooted early in the transition – possibly a key missed opportunity.

The Pace of Transition

The next critical question is whether the transition should be fast-forwarded to expedite elections even if proper normalization of the security and political environment has not been achieved. The generic dilemma is that early elections are likely to favour both old regime incumbents and the best-organised opposition, while late elections delay the injection of popular legitimacy into the new order and potentially allow the provisional government to entrench itself.⁵

For example, in order to achieve the irreversibility of the transition from military rule in the late 1980s, Chilean democrats accepted an early general election under imperfect conditions. It was this election that cemented the transition by paving the way for the demilitarization of the institutions governing public life. Likewise, in the bottom-up “people power” uprisings of the Arab Spring, there has been a popular push for early elections. The primary intention has been to replace self-appointed interim institutions with elected authorities. But there have also been sharp debates, especially in Egypt and Tunisia, reflecting fears among some stakeholders that their countries were being propelled into early electoral contests, favouring established Islamist opposition parties before new political actors were able to organise.

Contrary to the early elections approach, in the South African transition, the political playing field was leveled through an overhaul of public institutions and laws prior to holding the first democratic national election. But this was only possible because the major players had confidence in the irreversibility of the transition and due to the existence of a credible all-party monitoring and supervisory committee. Similarly, in Tunisia, the formation of the High Commission for the Realization of Revolutionary Objectives was a critical political pre-condition for delaying the first set of parliamentary elections. Confidence in the inevitability of the move towards democracy and the willingness of interim actors to hand over power was not as prevalent in Egypt and Libya, helping to drive their relatively early polls.

Sequence of the Transition

Trust, tradition and context determine whether a transition will allow for a few “wise men” to write a new constitution. This was the method used in Morocco, where King Mohammed VI outlined guidelines for the new constitution and the new charter was quickly written by an appointed commission of experts rather than by an elected assembly.⁶ The international tendency, however, is in the opposite direction – towards respect for a process that provides for

direct participation of the citizenry. This stretches the transition and brings to the fore the question of how to sequence elections and constitution drafting.

The sequencing debate turns on how the legitimacy of the new constitutional order can best be secured. Writing a constitution prior to elections entrusts the drafting process to an unelected transitional authority. But with the political strength of various actors untested by elections, founding fathers and mothers may be more likely to establish meaningful checks and balances on the exercise of power. This type of sequence is suggested in the Action Group for Syria’s communiqué, which proposes a review of Syria’s “constitutional order and legal system” prior to multi-party elections.

“The urge to continue in conflict is difficult to remove until there is an agreed roadmap; otherwise there are simply too many unknowns and everything left to contest.”

In contrast, having constitution-making supervised by an elected body provides a substantial boost of popular legitimacy to constitution making. In Iraq, Grand Ayatollah Ali al-Sistani famously prevailed upon the U.S.-led Coalition Provisional Authority as regards the holding of elections prior to writing a new constitution. More recently, this sequence was followed in Egypt, Libya and Tunisia. Among divided societies, however, there is often the concern that the winner of the first elections may seek to dominate the writing of a new social contract. This route, therefore, assumes a substantial sense of national responsibility on the part of the electoral victor. In the Arab Spring, such a spirit of political generosity has been more visible in Tunisia, for example, than in Egypt.⁷

In the latter case, a coalition of “constitution-firsters” (primarily liberals) argued that the drafting of the constitution could be made more participatory and representative if supervised by an appointed and inclusive interim council. Behind this proposal was a fear of being sidelined in constitution drafting by an elected Parliament that was likely to have an Islamist majority. Islamists meanwhile argued that the constitution would be more legitimate if supervised by an elected body. Egypt’s inability to resolve this tension led to virtually every step in the latter half of its transition being legally and politically contested. As of

writing in early December, its transition was set to culminate with a hostile rather than confirmatory constitutional referendum.

Most transitions are guided by the logic that the new enduring social contract should be popular and legitimate. This usually implies an elected constitutional assembly and a process that is of sufficient duration to enable consultation, deliberation, negotiation and agreement. Concerns about a tyranny of the newly elected majority can be ameliorated by transitional agreements providing guidance on how constitution drafters are selected, setting out decision-making rules that favor consensus, and pre-agreeing broad principles that the future constitution must respect (these points are discussed further below).

Hasty processes involving non-inclusive quick fixes can have long-term disastrous consequences (as seen in post-2003 Iraq). Tunisia and Yemen seem to have internalized this.⁸ In contrast, Libya's original roadmap provided only 60 days for drafting its new constitution.⁹

What should a transition agreement address?

To varying extents, the Arab Spring countries passing through political transitions have suffered from the lack of clear visions on transitional goals, complicating their democratic development.¹⁰ With this in mind, we now attempt to suggest issues, other than those dealt with above, that a model transition agreement might ordinarily address.

A time-bound roadmap

A transition agreement's particular contribution to securing the conditions of peace is to set out a time-bound roadmap for the process. The urge to continue in conflict is difficult to remove until there is an agreed roadmap; otherwise there are simply too many unknowns and everything left to contest. Thus, it is striking how often Arab Spring transitional agreements did not take up this fundamental task. The Yemeni and Libyan agreements did contain specific roadmaps, but formal timelines have generally been absent in constitutional declarations in Egypt and Tunisia.

For the legitimacy of the process, it is also vital that the transition follows the agreed rules and timeframes. A constitution-making process which arbitrarily deviates from its agreed rules may subvert its own standing and, to some extent, this has been the case in two very different recent transitions: Iraq and Egypt.

Decision-making formulae

Negotiators of transitional agreements have at their disposal a wide range of options with respect to decision-

making rules. However, one of the ever-present dangers in the transitional process is that joint decision-making can result in gridlock. Careful consideration should be given to decision-making formulae so that they reflect the need for consensus between major actors without allowing one, perhaps minor, player to hold the process to ransom.¹¹ Frequently, transition agreements also anticipate some form of deadlock-breaking mechanisms in the event of a failure to find agreement during constitutional negotiations.¹²

“Looking forward, Syria appears to embody almost every conceivable challenge that a transition could encounter.”

Pre-agreeing principles

In highly polarized societies, transition agreements may need to guarantee broad but fundamental principles that will govern the transitional process. These statements of principles can serve as a confidence-building device to allow previously conflicting parties and the general public to see that their basic anxieties and aspirations are addressed in advance. For example, in Tunisia, the elected National Constituent Assembly took the step of pre-publishing the Preamble of the new Constitution ten months ahead of the expected completion of the actual text. This was part of an effort by the Islamist-led majority coalition in the National Constituent Assembly to convince various elements of Tunisian society of the non-radical nature of its political programme.

Security and transitional justice

One of the principal functions of a transitional period is to build peace and public order for citizens to exercise their new rights. In an insecure environment, the establishment of basic stability can be *sine qua non* for the transition to succeed.

There are a host of security sector reforms that could require action during the transition, such as integrating government and opposition forces as in Yemen, or building trust between the political leadership and local fighters as was the case in Libya, and which will likely be a challenge in Syria, too. The political priority meanwhile is likely to focus on securing a civilian rather than military-run transition. The initial year of Egypt's transition provides a cautionary tale on the latter path.

Transition documents may also be required to address transitional justice issues, including the past behavior of security forces and insurgents, if only to guarantee their

proper treatment once permanent democratic institutions are in place. The failure to do so can lead to popular revenge-taking, as witnessed in Iraq and Libya, and which is anticipated in Syria.

There can be no quick fixes to these complex security and transitional justice matters. The issue for the transition may, therefore, be conceived as how to send the right signals at the early stages, while recognising the longer-term tasks.¹³

Minimum governance

In addition to a possible long list of tasks typically relating to transition and not detailed here, there is a general need to provide for minimum governance during the transition. This cannot simply be held in abeyance until the transition is completed. The high hurdle that must be cleared is not to allow the likely need for increased inclusivity in government to result in an ensemble of ineffective governance structures that magnify the challenge of meeting basic needs of the population.¹⁴

Permanence of the temporary

In encouraging negotiators and stakeholders to make use of a wider array of governance and decision-making options in developing transition agreements, we are aware of the dangers of establishing compromised institutions and rules. These relate primarily to the tendency of temporary institutions to become permanent – to insist on their own survival.

Looking forward, Syria appears to embody almost every conceivable challenge that a transition could encounter. The issues addressed in transition agreements may often sound technical. However, holding elections, constitution-making, broaching transitional justice and initiating security sector reform are all profoundly political tasks that alter the balance of power in a country. The question is whether an agreed set of rules can be developed to politically inter-mediate this contest. Such an agreement is not a sufficient condition for the success of a transition in Syria, but it is probably a necessary one.

- 1 The clearest example of this conflation in the Arab Spring is in Egypt. Following President Mubarak's resignation, the Supreme Council of the Armed Forces (SCAF) initially tasked a small expert committee to propose a set of amendments to Egypt's 1971 constitution. While some of these amendments focused on election modalities and a possible process for a new constitution, at the outset it was not clear if the exercise was principally aimed at "fixing" the 1971 constitution or, as revolutionaries and reformers demanded, requiring a new constitution and political regime.
- 2 See Action Group for Syria, "Final Communiqué," June 30, 2012. The Action Group includes the UN, League of Arab States, European Union and Permanent Five members of the UN Security Council.
- 3 See April Longley Alley, "Triage for a Fracturing Yemen," Foreign Policy Online, October 31, 2012.
- 4 Through the formation of a "High Commission for the Realization of Revolutionary Objectives, Political Reforms and Democratic Transition" that included all major political parties, civil society representatives, participants in the revolution and non-voting expert technical advisors.
- 5 See Brendan O'Leary, "Elections and the Management of Conflict" in Gareth Stansfield (ed.) *After the Arab Spring: Reconstruction and State-Building* (Witan Press, United Nations Association of the UK, Nov 2012). Tunisia and Libya sought to address concerns over transitional authorities entrenching themselves by requiring interim leaders to pledge not to run in the first set of new elections.
- 6 The Moroccan process from start to finish was wrapped up in a tidy three-month period. The drafting was followed by one day of public consultations held immediately prior to a popular referendum on the new charter (which returned a 98% approval vote). This was followed shortly thereafter by Parliamentary elections held under the new Constitution.
- 7 For more on the sequencing of constitutions and elections see Gluck, Jason, "Constitutional Reform in Transitional States: Challenges and Opportunities Facing Egypt and Tunisia," United States Institute of Peace, *Peacebrief* No. 92, April 29, 2011.
- 8 With Tunisia's constituent assembly likely to take eighteen months to produce a constitution and Yemen preceding its three-month constitutional drafting period with a planned six-month National Dialogue on key national issues.
- 9 This was subsequently expanded to 120 days – still a very tight timeline for allowing meaningful public consultation.
- 10 In Egypt, for example, the committee charged with proposing amendments to the 1971 constitution claim to have received no instruction or guidance from the Supreme Council of the Armed Forces (SCAF) on what to address in their work. The, not surprising, result was a quite narrow focus to the amendments, with extensive gaps and ambiguities in the resulting transitional roadmap (which the SCAF appeared to belatedly realise and sought to resolve with its first Constitutional Declaration). See Nathan Brown, "Egypt's Transition Imbroglio," *Foreign Policy*, April 16, 2012.
- 11 A formula known as 'sufficient consensus' is one approach that has been utilized in Northern Ireland and South Africa.
- 12 These could include procedures for amending the transition plan as well as agreeing to third party mediation or arbitration.
- 13 Authors' communication with Ian Martin, former Secretary-General of Amnesty International and Special Representative of the UN Secretary-General to Libya from 2011 to 2012.
- 14 To varying extents, Egypt, Tunisia, Morocco and Yemen all face situations of economic stagnation that color their transitional politics. In Tunisia it was riots over economic frustration and unemployment that launched the Arab Spring in January 2011. Almost two years into its transition, economic problems such as unemployment, poor service delivery and under investment remain the biggest potential catalyst for unrest in the country.

Early Warning and Mediation: Key Components of the ECOWAS Vision 2020

Florence Iheme

Today, the region covered by the Economic Community of West African States (ECOWAS) faces a host of challenges associated with religious fundamentalism, terrorism, illicit trafficking, piracy and small arms proliferation. While they transcend borders, many of these challenges are rooted in local issues and mirror the tensions between governed populations and their governing authorities. This breakdown of state/society relations requires conflict management approaches which interrogate more deeply the specific challenges faced within communities and the ways to overcome them. In that respect, this article highlights the increasing need to prioritise early warning and mediation as critical tools which empower local communities to identify threats, respond to ongoing tensions and prevent violent conflict.

Typically, early warning systems send alerts to decision-making authorities based on the analysis of data gathered on changes in human security indicators. These systems aim to mobilize action to prevent or to mitigate crises. However, they are often problematic due to a chronic alert-response gap, and this is especially true of political organisations, including ECOWAS.

In many respects, the ECOWAS region has made important and laudable progress in building its peace and security architecture in the past twenty years. Motivated by the intra-state conflicts in Liberia, Sierra Leone and

Guinea Bissau in the early 1990s, the ECOWAS region has built a peace and security architecture which transcends the boundaries of individual Member States. This is a unique achievement for a regional organisation, and one that made possible the conflict resolution efforts that took place in Côte d'Ivoire (2002–2010), Liberia (2003), Togo (2005), Guinea (2007–2012) and Niger (2009), with varying degrees of success.

Importantly, the ECOWAS peace and security architecture was, in many ways, forward-looking for its time, not least by recognising the critical roles of different stakeholders, including Civil Society Organizations (CSOs), in peace-making. This was a clear departure from the typical state-centric mandate of international and regional organisations, and has facilitated the engagement of CSOs at different points of the conflict cycle. In the case of Liberia, for example, the Mano River Women's Peace Network and the Inter-Religious Council of Liberia engaged Heads of States of the Mano River Basin countries – Liberia, Sierra Leone and Guinea – as well as the ECOWAS Commission, from the pre-talks stage to the actual mediation in Accra, Ghana. The Women In Peace-building Network, which is a programme of the West Africa Network of Peacebuilding, also joined the process at this stage. It is instructive to note that in addition to these organizations, others CSOs and key individuals were able to engage in the peace process

Ms Florence Iheme is Acting Director of the Early Warning Directorate within the Economic Community Of West African States (ECOWAS) Commission. From 2001 to 2011, she worked as a Programme Manager in the office of Political Affairs, Peace-keeping and Security of the ECOWAS Commission. In this capacity Mrs Iheme managed several projects which provided support to the peacemaking and peacebuilding efforts of ECOWAS missions in Liberia, Togo and Guinea Bissau. She also coordinated the efforts of ECOWAS in setting up the International Contact Group on Liberia. This led to the Liberian peace talks which lasted for three months, during which she provided operational/technical backstopping. Ms Iheme's position as the Coordinator of the Political Affairs Department from 2001 to 2003 involved the servicing of ECOWAS' key mediation organs, the Ministerial Mediation and Security Council and the Council of the Wise.

because the mediator, General Abdulsalami Abubakar, was granted the flexibility to widen participation beyond the framework drawn up by ECOWAS.

ECOWAS routinely mobilizes its various mediation organs (i.e. the Council of the Wise, Special Envoys, the Mediation and Security Council) in responding to crises. The recent move to strengthen its mediation efforts through the establishment of a Mediation Facilitation Division, which will support and co-ordinate mediation efforts at the local, national and regional levels, is welcome. The Mediation Facilitation Division aims to offer operational support to ECOWAS envoys, as well as strengthen the conflict-resolution capacity of civil society actors through technical advice and access to networks. In line with ECOWAS' people-centred vision, this initiative is based on the recognition that communities have better knowledge of their issues and that local 'manufacture' of peacemaking efforts is preferable to peace 'imported' from outside a 'community', as the latter could be fleeting.

“Local ‘manufacture’ of peace-making efforts is preferable to peace ‘imported’ from outside a ‘community’, as the latter could be fleeting.”

ECOWAS benefits from a sophisticated approach to early warning. The ECOWAS Early Warning Directorate, working with its implementing partner WANEP, has enlisted 45 Focal Points within Governments and civil society, who jointly monitor a number of peace and conflict indicators, and report to the Directorate through its zonal bureaus. Subsequently, the data gathered by field monitors is translated into various information and decision-making tools (i.e. daily highlights, incident and situation reports, country profiles, policy briefs, monthly and quarterly reports) which help the ECOWAS Commission ascertain the likelihood of conflict and determine its response. In addition, the Directorate works with the West African Civil Society Forum (WAC-SOF), an umbrella organisation for CSOs in the region, to harness information provided through the Peace Exchange Forum.¹

Despite this solid example of cooperation between a sub-regional body and civil society organisations, the alert-

response gap persists. Regional efforts to undertake early action are occasionally impeded by tensions between national sovereignty and regional supra-nationality. Here the example of Guinea in 2007–2008 is pertinent: early mediation efforts by ECOWAS were stalled by Guinea, as highlighted in a draft evaluation report of the first 10 years of the ECOWAS Early Warning and Response Mechanism (2001–2011). Such political realities illustrate the need for continuous engagement between regional organisations and their member states for the purpose of operationalising the region's collective security mechanism. At the same time, they also underscore the imperative of developing or strengthening national peace architectures – including early warning/early response structures – so as to empower Member States to assume their role as primary guardians for peace and security.

Recently, the Early Warning Directorate commissioned a study to review early warning and response frameworks in Ghana, Niger and Nigeria, with a view to generating discussions on a model national system. Among several recommendations, the study identified the need for a coherent relationship between the national and regional architectures; for co-operation and information-sharing at local, national and regional levels; and for increased complementarity through the creation of national systems that specialise in particular early warning processes on the basis of comparative advantage.

The study also highlighted the importance of “subsidiarity” as a principle for guiding the relationship between national and regional mechanisms. In my view, this is the super structure upon which coherence, co-operation and complementarity must ultimately be anchored. Also, for the region's collective security mechanism to be effective, equal assistance must be given to national mechanisms to enhance their capacity and ensure they are steadily resourced.

All in all, I wish to reiterate the fact that the exemplary engagement of ECOWAS in early warning and mediation is well known. But there is also a growing recognition that these achievements need to be strengthened, and that the links between early warning and mediation must become an integral part of ECOWAS' conflict prevention approach. The report on the evaluation of 10 years of the regional early warning/early response system is due to undergo a peer review process in February 2013. This process, therefore, should be an opportunity for the ECOWAS Commission to further discuss and identify policy options for a timely, effective, people-centred approach to peacemaking.

¹ This is a web-based application which allows unstructured commentary on peace and security issues by multiple stakeholders.

The Five Kinds of Access: Five Conditions for Successful Mediation

Carne Ross

A common image of mediation is of a process in which a neutral outsider manages to bring two (or more) parties, hitherto in conflict, to discussions and possibly to agreement.

But only the complacent and the powerful really believe this depiction. Any experienced mediator knows that it bears little resemblance to the complex reality of many political mediation processes. Life is not so simple. But thanks to its constant and lazy reiteration, above all by those whom it benefits, this model is a dominant – but dangerous – one in the minds of many people who practice and think about mediation.

It is dangerous above all because it puts the parties on an equal footing when, almost without exception in international processes, they are not. How you frame any process determines its outcome. In the Middle East “peace process” for instance, many outsiders, including unfortunately the dominant “mediator”, the United States, have tended to frame the process as between two more or less equal parties. This framing suggests that any fair outcome will require more or less equivalent trade-offs between the parties, for instance “compensating” Israel for the “loss” of territory to the Palestinians, perhaps by land swaps or other concessions, or accepting that Israel cannot be expected to accommodate all of Palestine’s demands, such as the return of refugees. Thanks, in part, to this inaccurate and unjust framing, the Middle East “peace process” is not viable.

Outside mediation between Sudan and South Sudan has often fallen into the same trap: President Thabo Mbeki, the lead African Union mediator, has suggested that Khartoum should be “compensated” for “allowing” South Sudan to separate in 2011, and “giving up” much of its oil in the process. Likewise, successful United Nations (UN) mediation between the representatives of the Sahrawi people of the Western Sahara and Morocco, the occupier of that territory, is often said to require “new ideas” and “willingness for concessions” from both parties¹. If parties are not equal and have behaved differently during the conflicts that have preceded negotiations, why should they be expected to make equal concessions at the negotiating table?

Parties are, in fact, very rarely equal. Often one party carries huge advantages over the other. One party may have been attacked, invaded or otherwise grievously wronged. For example, one party might be occupying the territory of the other. Mediators need to be fully conscious of these imbalances and, ideally, seek to remedy them if any mediation is to succeed and if its outcome is to endure.

There are five common imbalances in mediation processes. All involve challenges of access of one kind or another. Providing these different kinds of access to all parties will yield more sustainable outcomes.

1. **Access to the process:** it seems obvious, but is nonetheless too often neglected, that if the aim is to negotiate

Mr Carne Ross is the founder and Executive Director of Independent Diplomat (ID), the world’s first non-profit diplomatic advisory group. An expert team of former diplomats and international lawyers, Independent Diplomat advises democratic but marginalized governments and political groups so that their views are heard internationally. ID’s work makes international agreements fairer, more inclusive, and thus more enduring. Among others, its clients include the Republic of South Sudan and the Polisario Front, the recognised representatives of the Sahrawi people of Western Sahara. Its former clients include Kosovo.

peace between warring parties, all of them should be invited to participate in the mediation process. Is it plausible to hope for Israeli-Palestinian peace when Hamas's participation in formal negotiations is prohibited? Diplomatic isolation extends beyond formal mediation processes. For example, when I was a delegate at the UN Security Council, the primary world body for peace and security, it was almost invariably the case that the people, groups and countries most affected by the Council's decisions were neither present nor given the opportunity to present their views, either formally, informally or in any other manner. Until only shortly before it became a new member state of the UN, South Sudan was not permitted to attend, let alone speak, at UN Security Council meetings discussing the future of the country. This strikes most non-specialists as ludicrous, but is accepted as the norm by the UN and most of its member states.

Excluding a group from negotiations is often seen as a way of diminishing its power. This is rather like hoping that a disease will cure itself: if we ignore it, maybe the problem will go away. There are certainly groups with whom peaceful negotiation is all but impossible including, for instance, those with an absolutist and exclusively violent agenda (Al Qaeda springs to mind). But a decision to exclude a particular group from a mediation process should be seen very much as the last resort, once an armed group *has shown itself* to be unwilling to talk. This should be the only limitation applied to universal inclusion. Everyone deserves at least a hearing, however much we may disapprove of their views, or their methods. But this general principle aside, it is also important for mediators to judge the legitimacy of any group: whom do they represent? Groups that use violence should not be given privileged attention over groups that do not. These are by no means straightforward judgments, but the starting point should be to include rather than not.

2. Access to information: there is often a gross imbalance in the information available to parties participating in a mediation or a diplomatic process. During negotiations on its final status in 2003/4, members of the delegation from Kosovo had no access to the considerable archives of the former Yugoslavia, including maps and land records, that were available to the Serbian delegation, who were therefore able to make sweeping (and inaccurate) claims about property rights, knowing that they could not easily be challenged. Kosovo also had no archival history of the complex border issues with its other neighbours, complicating its establishment as a state.

3. Access to negotiating skills: powerful countries have the benefit of cadres of highly skilled and experienced diplomats and negotiators. This puts one side at a major advantage over the other. An example from a diplomatic

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negotiation, not a traditional mediation, can illustrate this point which also applies more generally to negotiations of all kinds. At the United Kingdom Mission to the UN, which almost fetishized its negotiation skills, we took pride in drafting more resolutions (and, thus, chairing the subsequent negotiations) than any other delegation. We did this because we believed it helped produce final texts more accommodating of our own requirements. And, indeed, this was often the outcome. I negotiated a great many Security Council resolutions on weapons inspections and sanctions in Iraq in the late 1990's and early 2000's. Because we were effective and aggressive negotiators, we often congratulated ourselves that we had “won” the negotiation, producing texts that met our needs satisfactorily. But in “winning”, we did, in fact, lose. Other countries with different views, like Russia and France (whose drafts we had successfully sidelined), felt cheated, and consequently did not robustly support the ensuing resolutions and in one crucial case² abstained. Partly as a result, Iraq did not implement these resolutions. History tells of the ultimate outcome.

4. Access to legal expertise: one doesn't have to be too much of a cynic to believe that international law, by its nature, is a function of power. International law is neither absolute nor a Platonic ideal: it is highly malleable. The crowd of international lawyers is now vast. Inevitably, the most powerful states have access to the highest number of, and most skilled, lawyers. In the UN climate change talks, the United States and China, which are incidentally the two countries upon whom success in these negotiations hinges, attend with scores of negotiators and lawyers. The smallest countries, which include those most vulnerable to the effects of a warming atmosphere – such as sea level rise – have the smallest handful. Non-profit organisations like Independent Diplomat try to fill this gap, but it nevertheless remains, rendering the most needy at a disadvantage. Clearly, a lasting and effective negotiated climate agreement must address the interests of small states as much as it does those of China or the United States. The chances of a comprehensive legal agreement to address climate change today, however, remain slim.

5. Access to the wider diplomatic system: the broader diplomatic system outside of, but relevant to, a direct mediation negotiation process is often crucial to its outcome. Mediation processes are often framed and designed by international bodies to which the parties have no access and which they do not understand. Before Kosovo became independent, the diplomatic process to determine its final status was secretive and complicated, conducted by the so-called Contact Group of six leading countries. Despite having a democratically elected government, recognised as legitimate by many countries, Kosovo was expressly prohibited by UN Security Council Resolution 1244 (1999) from having any diplomatic representation whatsoever. It was nonetheless expected to co-operate with, and accept, the decisions of the Contact Group even though it was unable to engage diplomatically with the members of the Group, or indeed with any countries. As a result, many Kosovars felt excluded from discussions about the future of their own country (as indeed they were). This frustration was one trigger for the widespread violence which engulfed the province in March 2004, killing eighteen people. The causal link between diplomatic exclusion and political violence was clear. Governments, and the diplomats who work for them, have tended to feel uncomfortable about dealing with non-state actors, even those who are recognised *de facto* as legitimate authorities in their own territory. This reserve is no longer sustainable.

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In each of these five cases of imbalance, there is an obvious solution, although sadly it is rarely implemented. “Inclusion” might be one word that generally captures how we might address each of these requirements for access. Many countries, international bodies and mediators are happy to pay lip service to the general aspiration of “inclusion”. But it is important that “inclusion” is understood as having, at least, these five specific and quantifiable elements (and there may, indeed, be others). It is only by addressing each of these imbalances that mediation processes can have the highest chance of success.

2013 will bring some considerable mediation challenges. In Syria and Mali there are already complex multi-party mediation attempts underway. It is clear from these cases, and from others, that processes involving different kinds of actors, states, armed groups and legitimate non-state actors will become more the exception than the rule. Success – in other words, peace – will depend on applying these principles of inclusion with deliberation. The different forms of access defined here all matter to successful mediation: ensuring their implementation should now become the norm, rather than the exception.

1 A senior (but now retired) UN official with responsibility for the issue recently characterised the issue to the author in these terms.

2 Resolution 1284 (1998) which established the new UN weapons inspection body, the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC).

Beyond Mediation: Toward a Political Settlement in Afghanistan

Barnett R. Rubin

The idea of a political settlement of armed conflict in Afghanistan has gone through cycles of interest and indifference since the start of civil war in 1978. The fundamental obstacle to all such efforts has been the weakness of the Afghan state. National institutions are the first line implementers of any peace agreement in a civil war, with international forces playing, at best, a reinforcing role. Since its founding in its current form, however, the Afghan state has required foreign assistance, especially to the security forces, in order to exercise even a minimum degree of control over its territory and population. Since this foreign assistance comes from other states, which provide the aid in pursuit of their own objectives, settlement of civil war in Afghanistan also depends on international politics. Any settlement must include agreement on a flow of resources to support the Afghan state, and the interests of whatever power or powers supply those resources may generate yet more conflict, either with domestic Afghanistan actors or with other international actors.

The current quest for a political settlement faces the same dilemma. Any agreement between the Afghan Government and the Taliban, or among the Taliban and other Afghan actors, can be implemented only if the state they all agree to recognise has sufficient resources to exercise sovereignty. The Afghan Government is pursuing long-term agreements with the United States (US) and others to guarantee such resources through aid, especially to the Afghan National Security Forces (ANSF), but this quest is not yet linked to the political settlement.

Many, if not most, of Afghanistan's neighbours – and citizens – would have an interest, other things being equal,

in a stable Afghanistan with effective security forces. But since the source of the ANSF's resources would be the US, accompanied in all likelihood by a US-led international military mission, other things are not equal; neither the Taliban nor most of Afghanistan's neighbours are yet willing to support a settlement that will entrench and strengthen the US presence in the state and region, regardless of its potentially positive effects on the stability of Afghanistan itself.

The history of the Afghan state provides few clues on how to adjust to the current situation. When Afghanistan was delimited and recognised in its current borders after the second Anglo-Afghan war, Britain stabilised Afghanistan by both subsidising a centralised state and reaching agreement with its rival Russia over border delimitation and spheres of influence. This arrangement ended in 1919 with Afghanistan's full independence but was partially reinstated after the fall of King Amanullah's modernising autocracy in 1929. Through the Cold War, this arrangement evolved toward internal balancing of Soviet and Western influence in different regions of Afghanistan, but it collapsed in the 1970s and has never been reinstated.

The 1988 Geneva Accords were the first attempt to re-establish stability through a political settlement, but they turned out to be, at best, a face-saving cover for the Soviet decision to withdraw its troops. The text of the Accords provided for the withdrawal of Soviet troops, the end of aid, and a safe haven for the mujahidin in Pakistan. Soviet aid to the Kabul government would have continued, so that Afghanistan without Soviet troops would, once again, have been a modified buffer state, but this time within the Soviet sphere of influence.

Dr Barnett R. Rubin is Senior Fellow and Director of Studies at the Center on International Cooperation, New York University. He is currently serving as Senior Advisor to the U.S. Special Representative on Afghanistan and Pakistan.

The US and Pakistan ultimately rejected this arrangement over the funding of the Afghan state – to which they had seemingly agreed – and insisted on their right to aid the mujahidin as long as the USSR aided the state. The state survived but could not persist. The subsidy kept the weakened state alive in the face of armed opposition, though that state could not consolidate its authority and increasingly relied on paramilitary groups outside of the state's direct command and control.

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When the Soviet Union collapsed and the aid ended, the US and Pakistan succeeded in rolling back Soviet influence, but not in extending their own. While the power vacuum enabled the United Nations (UN) to broker agreement on a political settlement in early 1992, the state was so weak that the army collapsed and there was no force on the ground to enforce the agreement. Instead, armed militias fought over the capital and in the provinces. The various attempts to resolve the conflicts, through UN or Pakistani mediation, similarly collapsed.

In the mid-1990s the Taliban seemed, at first, like they might provide a consolidated southern Pashtun counterpart for the Tajik-dominated authorities in Kabul, the west and north as well as the Pashtun tribal alliances in the east. But the UN's attempts to broker the corresponding agreements also collapsed. The Taliban proved internally cohesive and disciplined enough to use Pakistan's relatively meagre resources to defeat most of their weakened enemies and to consolidate a weak form of control over most of the territory and population. They might have succeeded in consolidating their rule more fully, had not one of their international supporters – in this case the Al-Qaeda organisation rather than a state – exploited its influence in Afghanistan to attack a great power: the US. The US, therefore, overthrew the Taliban, returned their enemies to power, and led an international effort to reconsolidate the Afghan state.

The Bonn Agreement was the next partial political settlement in Afghanistan. It was enforced and implemented,

not primarily by Afghan national security institutions but by international forces who also, if belatedly, began the task of building the ANSF so that they could potentially stand on their own with minimal assistance. Though it contained many of the elements needed for stability, the political dispensation agreed in Bonn was perceived as a threat to what the security establishment in Pakistan defined as its interests. While the Bonn Agreement was intended, by its UN drafters, to provide a path to reintegrating the Taliban through a political process starting with the Emergency Loya Jirga, the coalition of the victors did not share this vision. Led by the US – acting in unison with many of its Afghan allies, as well as Russia, India, and Iran – the coalition branded the Taliban as terrorists who were to be captured or killed rather than assimilated into political life. The detention at Guantanamo of even those Taliban leaders who had surrendered became the symbol of the movement's political exclusion.

Since 2009, after President Karzai's contested re-election, the US and the Afghan Government have concluded that the Taliban cannot be wiped out or defeated, and they have reached a very general agreement to create a path for Taliban to enter the political system through programmes of reintegration and reconciliation. At least some of the Taliban leadership have also decided to explore whether – now that they have established that they are a factor that cannot be eliminated – they may gain more from a political settlement that recognises their influence than from seeking a military victory. Pakistan has arrived at a similar conclusion, that despite its misgivings about the current government in Afghanistan, restoration of Taliban rule in Kabul would also threaten Pakistan.

Despite a very vague agreement on the potential desirability of some form of political settlement, the starting points of, and visions for, the process among the various actors have proven to be far enough apart to create recurrent crises and obstacles in the faltering process of dialogue. A major obstacle to implementing any eventual agreement is, however, once again a conflict over who will support the Afghan state.

At the initiative of the Afghan Government, Kabul and Washington have negotiated a Strategic Partnership Agreement. This is a binding executive agreement which has been overwhelmingly ratified by the Afghan Parliament. This agreement commits the US to assisting Afghanistan in the political, economic and security fields for ten years after the 2014 end of NATO's combat role. The members of NATO, led by the US, have also pledged billions of dollars to sustain the growing ANSF over the same period. A linked Bilateral Security Agreement, currently under negotiation between the US and Afghanistan, will specify the terms and size of a long-term US military presence to strengthen the

ANSF and continue the regional counter-terrorism mission. While the US sees this agreement as aimed mainly at strengthening the counter-terrorist gains since 2001, underpinned by stabilisation and democratisation, the Afghan Government also views US aid as essential for strengthening its capacity to pursue its disputes with its stronger neighbours, mainly Pakistan and Iran. Furthermore, while the US consistently repeats that its presence in Afghanistan would not be aimed at any third country, its mere presence provides the US with military and logistical options it would otherwise not have in the region.

This planned long-term presence proved to be one of the major obstacles to the conclusion of the Istanbul Process, an agreement aimed at creating a regional framework for the stabilisation of Afghanistan – including countries from Turkey to India, Russia and Saudi Arabia. Many of these states, especially Russia and Iran but also to a lesser extent Pakistan, saw this framework as an attempt to gain their consent to, and support for, a long-term political settlement in Afghanistan backed up by a US presence. While all ultimately agreed on a declaration, implementation is partially blocked by continuing lack of clarity and suspicion about the long-term role of Afghanistan in US strategic planning. Afghanistan's policy, at least as expressed in statements by President Karzai, also vacillates between seeking US support against the country's neighbours, especially Pakistan, and attempts at rapprochement with those same neighbours, in part motivated by ongoing conflicts with the US over the status and strategy of US forces in Afghanistan.

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These suspicions lead to divergences in the approach of the Governments of the US, Afghanistan and Pakistan toward the process of political settlement, while Iran, which has much to gain from stability in Afghanistan, nevertheless still places a higher priority on destabilising the environment for the US presence, which it increasingly perceives as a potential threat.

The current structure of the international system, as well as the increased political mobilisation in Afghanistan and all its neighbours, make the problem of stabilisation and settlement far more complex than when it could be settled among two European empires and an Afghan dynasty. The incentive that may drive all actors to overcome these complex obstacles to co-operation is the economic potential of the region, situated as it is between the rising economies of China, India and the rest of east and southeast Asia, and the energy resources of Central Asia and the Persian Gulf (resources now also being discovered in Afghanistan itself). Profiting from these opportunities, however, will require decades of stability and many billions of dollars of investment in national and international infrastructure, both physical and political. The diplomatic architecture of these various processes has started to engender a common understanding of the existing opportunities. Persevering through the inevitable setbacks and bloody reversals presents international mediation and diplomacy with one of its most difficult challenges.

The Centre for Humanitarian Dialogue

114, Rue de Lausanne
1202 Geneva | Switzerland
info@hdcentre.org
t: +41 22 908 11 30
f: +41 22 908 11 40

www.hdcentre.org

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Norwegian Ministry of Foreign Affairs

7. Juni-plassen/ Victoria Terrasse
PB 8114 Dep. N-0032 Oslo | Norway
post@mfa.no
t: +47 23 95 00 00
f: +47 23 95 00 99

www.government.no/mfa