



Background Paper 4c

Engaging Armed Groups – the practical challenges: negotiation support

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1. Introduction

This paper outlines the reasons why mediators might provide support to armed groups in negotiation practice, and suggests specific areas in which support might be considered. It concludes by putting forward potential negative fallout from the provision of such support and by raising questions for discussion as to how mediators might handle this in the broader context of handling the challenge of engaging with armed groups in the first place.

2. Setting the stage

When engaging in contemporary conflicts to promote a peaceful settlement, mediators are often confronted with at least one party that struggles to perform at the bargaining table. Setting aside for one moment the thorny primary issues around engaging armed groups such as the dangers of legitimisation, manipulation by the armed group, or loss of impartiality of the mediator¹, it is likely that in many cases non-state actors such as rebels, warlords and militia groups do not have the same level of experience in diplomatic affairs and negotiations that their government counterparts do. As a result, that weaker party may not understand the structure, pace and process of mediation, which may result in a failure of confidence in the peace initiative. If that party does not have the strategic vision or practical presentational skills to represent its interests and positions in a formal negotiation setting, the result may be the presentation of strident demands and preconditions that effectively constitute stonewalling and prevent mediation from building common ground and generating compromise between the parties.

In most peace processes, the role of a mediator goes beyond the simple facilitation of talks between the parties. That person is also engaging with the parties on a bilateral basis to understand their objectives and strategizing for how to structure and sequence the major issues under discussion in order to increase the likelihood of success. However, when one or both parties to a conflict lack the capacity to fulfil their role in the dialogue, structural and procedural proposals from a mediator are often not sufficient to create the preconditions for compromise.

Mediation practitioners are familiar with the debate between those who believe that mediators should be more passive and less outcome-centred and those that argue it is unrealistic to expect this of mediators and it is often incumbent upon the mediator to find an outcome. The paper assumes that in reality, most mediators employ a combination of techniques at different moments in a mediation process. This could include facilitating communication between the parties at one moment and then moving towards empowering the parties to identify solutions on their own. However, regardless of the technique or process most mediators are outcome centred and employ a directive approach at trying to bring the two parties to agreement.

3. Subjects for Negotiation Training

Although every peace process is different, it is possible to identify some of the core factors that could be considered when offering negotiations training to one or more parties.

a. Contextual and pre-negotiations issues

- **Building confidence in the process:** it will be essential to ensure the parties understand how a peace process actually works. If one or more parties expects that peace talks will move at a fast pace and immediately address their main concerns, they may feel tricked or manipulated when the process is actually laborious and prolonged; a party's representatives may feel thrust into a game where he or she does not understand the rules and becomes confused or angry. Either of these circumstances increases the chances that the concerned party will defect from the peace process and return to fighting. Confidence building also includes giving the parties a chance to prove good faith to each other and interested international observers.
- **Making full use of pre-negotiations talks:** all negotiations go through various stages including preparations, the direct discussions between the parties, the reaching of an agreement, and its implementation. Pre-negotiations discussions are important because if the mediator tries to change the terms of a negotiation in the middle of talks, the chances are the changes will favour one side, and thus be rejected by the other. They also allow the mediator to establish what the interests and positions of the parties are in a way which allows him/her to start gathering ideas for areas of potential consensus and compromise.

- **Recognising the dangers of imposing pre-conditions for negotiations** and the need to establish and abide by a ‘**declaration of principles**’ from which the talks will proceed. These will mitigate the process getting stalled.
- **Understanding and managing the role of international observers** who provide resources and the political will to move the process forward, possibly including the creation of ‘carrots’ and ‘sticks’ to ensure that all parties stick with the negotiations and abide by their agreements.

b. The negotiations process itself

- **Participation** – Who will participate? How many delegates will each party receive? Are there criteria for participation? On what conditions can new parties join the talks at a later stage?
- **Agenda** – What issues are on or off the agenda, and will they be discussed simultaneously or sequentially? What are the parameters/principles of the talks (i.e. what will be on the table for negotiation)?
- **Format/structure** – What will be the format of the talks (e.g. shuttle diplomacy, face-to-face, using representatives, high-level summit between leaders, use of sub-committees, roundtables, plenaries, etc.)?
- **Procedure** – Who will chair the meetings (e.g. the mediator, the parties, or another party)? What are the rules of procedure, especially for decision-making (e.g. majority voting, full consensus, sufficient consensus, etc.)?
- **Venue** – What is an appropriate venue? What special logistical and communications requirements exist?
- **Protocol** – Are there sensitive questions of protocol, and how should they be handled?
- **Confidentiality** – Will the discussions be held confidentially or will they be open to the public? To what degree can the parties speak to the media during the process?
- **Arbitration** – Will an ‘arbitration mechanism’ – probably one that includes both parties and a neutral third-party – be set up to deal with deadlocks and disputes?
- **Deadlines** – Will ‘timeframes’ be used for the overall process and / or different rounds of talks, and what are the risks / advantages of doing so?
- **Financing and logistical support** – Who will pay for and organize the negotiations, and what political implications does this have?

c. Building Negotiating Teams

Negotiations depend a great deal on the individuals who are involved in them. The group may require assistance to ensure that they construct the most effective possible negotiating team. The team should include people with different personal skills and political responsibilities that can work together smoothly and trust one another. Key considerations include the following:

- Include people that can play the following roles, with the understanding that one person can sometimes play multiple roles:
 1. Lead negotiator – and deputy negotiator, if possible
 2. Decision maker(s) – sometimes not at the venue

3. Analyst / Strategist
 4. Technical experts in key issues up for discussion
 5. Person with good contacts and personal rapport on the other side that can build trust between the parties
 6. Persons who complement the moral / political strength of the team
 7. Spokesperson
 8. Communications officer to maintain contact with constituencies
- Ensure that everyone agrees on a common set of interests, positions, options, etc., and develop the negotiations strategy jointly.
 - Determine the team's decision-making mandate and parameters for developing new positions 'off the cuff'
 - Set up a mechanism to deal with internal disputes on your side to prevent the negotiations from creating dangerous tensions or divisions.
 - Ensure the team understands the composition of the other side's negotiating party, in terms of, for example, distinguishing between 'hardliners', 'moderates', and 'decision makers' and less influential members of the team.

d. Skills Required for Dialogue

While the list of necessary skills is obviously a long one, it is worth highlighting the essential elements here.

- **Problem solving techniques** are often used by parties as the most successful way of undertaking negotiations. This involves working together with representatives of 'the other side' to create mutually acceptable / 'win-win' solutions. Although both sides in a negotiation probably make competing demands, the idea is to gradually reduce the gap between the negotiating demands or 'positions' that each side puts forward, in an effort to find a solution that meets the underlying 'interests' of both sides. This requires analysis of the following issues:
- **Understanding interests** – What are the underlying objectives that the party seeks to achieve? Can they explain these interests and justify them?
- **Understanding positions** – What are the different demands the party will make to achieve its interests? An 'opening position' and multiple 'fallback positions' will be needed. This includes the party identifying its bottom line or BATNA (best alternative to a negotiated agreement).
- **Understanding options** – What are the various means that can be implemented to overcome immediate problems and achieve the party's interests? The mediator will want to encourage as many options to be identified as possible.
- **Identifying standards** – What objective information that is accepted by all parties can be used to determine if different positions and options are fair to all parties and effective in meeting all sides' interests?
- **Understanding the general principles and etiquette** for presenting the party's positions, interests and proposals, and for responding to those from the other side.
- **Identifying tactics** that can be used to 'reframe' contentious issues in ways that do not lead to a breakdown in the talks, and that can be used to respond to 'stonewalling' by other parties, and to assist the mediator to break a deadlock in the negotiations.

4. Beyond Negotiation Training

If providing negotiations training is successful, there is no reason for the initiative of the mediator in building the armed group's peace building skills to end there. Rather, early efforts at negotiation training may provide an effective platform for mediators to assist groups to think beyond the immediate negotiations and develop medium- and long-term plans for post-conflict reconstruction.

If an armed group required negotiation training to make up for their lack of previous experience with diplomatic processes and dialogue, they are likely not to have had experience in issues of government policy making and democratic processes. Once specific training on negotiations skills is concluded, the mediator may solicit support from responsible international organizations and donor governments to continue the process of training in a way that refocuses on the skills that the group might require to successfully implement any agreements that are reached (regardless of whether they are the "winning" or "losing" party).

In particular, basic training in the following areas could be considered:

- Human rights and humanitarian law – training in which may be useful and relevant to the negotiations process itself, regardless of its outcome
- Democratic processes
- Parliamentary responsibilities
- Divisions of authority between various branches of government
- Public sector management
- Economic policy development
- Rule of law and security sector reform, etc.

This training can be outsourced to one of the wide range of organizations - UN, NGO, international and governmental – who have developed or are building expertise in these and related areas.

In addition, mediators could consider using a negotiations training platform to reach out beyond the representatives of the group that attends the formal peace process to engage with their 'field elements' and the wider communities in a conflict area. Training on peace efforts, human rights and humanitarian law could, in this regard, provide the opportunity for mediators to build wider 'peace constituencies' through public information and sensitization campaigns.

5. Negative Fallout

There are four major areas for possible negative fallout resulting from such training input:

- **The possible change in role of the mediator to become a strategic advisor**, which could jeopardise the mediator's impartiality. It is important in facilitating training to

ensure that this should not be akin to or perceived as correcting a power imbalance between the two parties.

- **The change in relationship between the mediator and party receiving training:** in any long and intense peace process, the relationship between the mediator and the parties to the conflict will grow and evolve. For example, it is inevitable that a mediator may feel more comfortable on a personal level with some individuals in the talks as opposed to others. However, when actively assisting a party in the talks, the mediator needs to be cognizant of the change in any relationship dynamics that could disempower the party, undermine the intention of assisting a party in obtaining a voluntary agreement and jeopardize the impartiality of the mediator.
- **The potential empowerment of the wrong people:** it is not unusual for parties to the talks to be unrepresentative of the victims of the conflict and all the actors involved in a conflict or to even have all their decision makers at the talks. The mediator may find it difficult to broaden the representation of the two parties to the conflict to ensure that all relevant actors are involved. In this case, it is critical that in assisting a party to come to agreement, the mediator avoids strengthening the party at the expense of more representative individuals or groups and also tries to find a way to include decision makers and other relevant persons.
- **The concerns of the other party about support provided to their opposite numbers:** as any mediator begins to work or even spend more time with one party more than the other, the mediator's impartiality will begin to be questioned. It is incumbent upon the mediator to assuage the concerns of the other party and ensure that all their efforts are done in full transparency.

Questions for discussion:

How in practice might a mediator minimize negative fallback from this kind of proactive support to an armed group?

Are there proven strategies for ensuring the “right people” are included in talks, training and so forth?

Are there proven strategies for ensuring transparency of assistance to one of both parties?

How does the question of negotiation support affect the issues of legitimization of a possibly proscribed group, and the threat – perceived or otherwise – to mediator impartiality?

What is the difference between providing support of this kind to an armed group, and to a state actor?

ⁱ These issues were discussed in a short paper presented at the 2004 Mediators' Retreat: *Asymmetric Mediation - Armed Groups and Peace Processes*, David Petrusek, May 2004