

It ain't over 'til it's over: what role for mediation in post- agreement contexts?

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International mediation is conventionally treated as the reserve of peace processes which, once culminating in a peace agreement, are expected to progress to implementation and various forms of post-conflict recovery in which mediation would have little or no part. Many have criticised the degree to which mediators focus on getting a deal and getting out, leaving the messy business of implementing those deals to others, at least until the deals fray or come apart, requiring new rounds of mediation.

Most negotiated settlements create outcomes with at least some – and often many – issues unresolved, requiring some mechanism for continued negotiations and peacemaking, either embedded in or alongside whatever structures are in place to implement an initial agreement. The types of issues likely to arise are commonly noted in mediation literature and practice. They include:

- tough issues deliberately avoided in initial mediation in order to get agreement around core issues where a compromise can be reached (e.g. Kosovo final status)
- disputes over interpretation of an agreement, including in relation to tacit understandings cultivated by mediators
- new issues that arise post-agreement, either unanticipated in initial mediation (e.g. oil discovery in Timor-Leste) or that may derive specifically from disputes over implementation, especially in the absence of effective implementation monitoring or dispute-resolution mechanisms (e.g. electoral provisions in post-Dayton Bosnia)
- eruption of localised conflict (e.g. Ituri and Kivu in the Democratic Republic of Congo)
- dealing with parties who were excluded from initial mediation who have the capacity

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to destabilise the situation (e.g. the Taliban in Afghanistan) as well as general ‘spoiler’ management

- continued requirements for confidence-building between the parties, and managing relationships with key regional and external actors, and
- dealing with crises generated by rising expectations.

There may also be a role for mediation-like efforts in relation to post-agreement dialogue processes or similar efforts to broaden popular support for a settlement. This dimension of post-agreement consolidation has a particular salience if one understands contemporary civil wars to be predominantly rooted in crises of the state and state–citizen relations.²

Whether these issues arise, and the seriousness of the risk they pose to a given peace process, will obviously vary from case to case. However, there is generally a particular risk in the immediate post-agreement phase, increasingly referred to as the period of ‘early recovery’. This is a period in which there is usually an unhelpful constellation of factors creating new uncertainties – including change in international personalities, institutional handovers, implementation mechanisms in the process of being established, and new flows of resources – which creates new opportunities and incentives for backsliding and spoiling. There is also, of course, the broader concern about the generally high rate of relapse in negotiated settlements.

Taken together, these factors underscore the importance of treating the post-agreement period as the continuation of a high-stakes political process. In some respects the situation in this period may be more fragile or turbulent even than during the prior conflict because of new risks, uncertainties, and occasionally perverse incentives. Therefore, political process is crucial here, with what Fabienne Hara has referred to as conditions requiring ‘sustained mediation’.³ In short, this is a context in which the need for further mediation – especially if broadly understood – is likely to be high.

What is different about mediation in the post-agreement period?

In some basic respects, mediation post-agreement is not that different from mediation to get an agreement in the first place. The task is still to facilitate or broker agreement among political parties who disagree, and the effectiveness of mediation will still turn on the kinds of professional skills and requirements noted by Brahimi and Ahmed,⁴ among others. However, the post-agreement context is likely to be distinctly different in some fundamental respects that can enable, or disable, prospects for effective mediation.

² Crocker, Chester A, *Peacemaking and Mediation: Dynamics of a Changing Field*, Coping with Crisis Working Paper Series, International Peace Academy, March 2007; Ghani, Ashraf and Lockhart, Clare, ‘Writing the history of the future: securing stability through peace agreements,’ unpublished paper, Institute for State Effectiveness, 2006.

³ Hara has made this point most consistently about Burundi in International Crisis Group reports but also more generally in unpublished papers and lectures since 2003.

⁴ Brahimi, Lakhdar and Ahmed, Salman, ‘In pursuit of sustainable peace: the seven deadly sins of mediation’, *Annual Review of Global Peace Operations 2008*, A Project of the Center on International Cooperation, Lynne Rienner Publishers, Boulder and London, 2008, pp. 9–20.

First, the nature of international involvement will be transformed by whatever apparatus is put in place to support implementation, whether this is a major multi-dimensional peace operation, a special political mission, donor mechanisms or other forms of transition assistance. NGOs are also likely to flood in with resources and programmes. This creates obvious coordination challenges within the mosaic of UN, regional organisations, military operations, neighbouring states, donors and NGOs that will variously be present and all engaging in some fashion with previously warring parties and their constituents. (It may also create the need for ‘mediation’ among implementing actors.)

Second, such international presence can create new sources of leverage, especially if an international peace operation is mandated under Chapter VII by the Security Council, exercises transitional authority, or if there are diplomatic or other resources that are clearly at the disposal of an international presence. The ability to use such leverage will turn on many factors, including the degree to which there is a shared international strategy for how and when to use it. There is also likely to be a tension between exercising leverage and an overall presumption in favour of post-conflict authorities and ‘national ownership,’ a concept that warrants more critical and fine-grained reflection in relation to specific conflicts.

Third, at the same time, there is a risk of diminishing attention from key capitals at the political level as the urgency of war-termination subsides. There will usually also be a shift to other actors within those capitals – principally, to development and technical agencies – as the focus moves from negotiation to implementation and broader recovery. This is an old issue and among the earliest concerns about international assistance in war-to-peace transitions that spurred the original interest in peacebuilding as a field of inquiry in the 1990s, as well as the recent creation of the Peacebuilding Commission in 2005.

Fourth, the culture and practices of implementing agencies tend to be very different from those of mediators, as much as they also differ from one another. The many manifestations of peacekeeping operations will be shaped by doctrine, standard operating procedures and military requirements. The actors engaged in post-conflict recovery will tend to be shaped by the practices, routines and generally technical orientation of donors and specialised agencies. Each will also have distinct mandates, different approaches to and knowledge of the practice of mediation, and varying constraints in relation to political processes. Though a rough generalisation, the actors and agencies involved in implementation environments will tend toward the technical and programmatic in a way that is generally unlike the culture and ‘craft’ of mediation and diplomacy. This difference in professional culture and skill sets compounds the coordination challenges noted above.

Fifth, there is usually a higher degree of popular exposure in post-agreement contexts, as well as higher popular expectations. This creates distinct dynamics and pressures on any subsequent mediation, as well as new requirements for communication and public-information strategies.

Finally, and perhaps most fundamentally, as the parties themselves make the transition from war to peace, they face new constraints and pressures to which any further mediation needs to be attuned. These include managing the fallout of any compromises they will have made with constituencies, navigating their own changing incentives and interests, and generally contending with conditions of considerable uncertainty and flux. The likelihood of what political scientists and economists call ‘information failures’ may actually rise after a peace deal is made, with attendant risks of misunderstanding, miscalculation and additional volatility. Ironically, the interests of the parties may be more aligned in the context of negotiating an initial deal than in the context of implementation where the consequences of compromise – and differential effects on different parties – start to become real.

What are the implications for how post-agreement mediation should be conducted?

Every context will necessarily present unique issues and dynamics, according to which international mediation strategies should be crafted. Nonetheless, several factors are worth keeping in mind.

First, the UN or other implementing bodies need to give careful thought to continuity of personnel. Particularly in the immediate post-agreement phase, there is a good argument for retaining core elements of the previous mediation team, if not also the lead mediator, in order to ensure that all the intangibles and unspoken understandings of a prior negotiating process are not lost with institutional or leadership changes. Mr Jean Arnault in Guatemala, Ambassador Terje Rød-Larsen in Israel-Palestine, and Ambassador Lakhdar Brahimi in Afghanistan are some of the most obvious examples in which continuity was important to early implementation. There may of course also be contexts in which international ‘new blood’ is actually more productive, depending on the quality of the mediator’s relationship with the parties. In this case, retaining key staff and capacities below the level of envoy or Special Representative of the Secretary-General (SRSG) can be a way of managing the risks of handover.

Second, all of the operational processes to design and deploy peace operations or implementation mechanisms – integrated mission-planning processes, integrated peacebuilding strategies, post-conflict needs assessments and so on – would benefit from keeping a more consistent focus on the core political requirements of post-agreement contexts. This relates to mission structure and capacities, skill sets of key personnel, and support systems required to backstop the likely need for ongoing mediation in some form.

In particular, SRSGs or their equivalent need to have the structure, resources and flexibility to manage or facilitate complex political processes. These include: robust information and analytical support; budgetary and operational flexibility to work with (i.e. travel to) key capitals and regional players; modest discretionary resources for political-process management; standby access to envoys, mediators and technical experts who may need to be deployed to solve particular problems; ideally, a unified intergovernmental mechanism to support a continuing political process;⁵ and, not least, a clear political lead.

Third, the parties and any lead international presence need to be able to draw on a diverse pool of alternative mediators with specialised knowledge, less visibility, and perhaps even deniability in relation to a major international mandate. The choice of mediator and approach to post-agreement mediation should obviously match the type of crisis or conflict that arises but also reflect sensitivity to the potential reluctance of parties to seek further international mediation at a time when they see themselves more decisively in the driving seat (and when they may already be struggling to retain or gain domestic credibility). Mediators of an initial deal can help offset this risk by trying to get agreement about robust implementation and dispute-resolution mechanisms that either don't require international involvement or that structure it in such a way as to diminish sensitivities. Where UN or regional organisations are involved in implementation, including language in mandates that gives a clear entry point for further good offices and facilitation is also a sensible anticipatory move.

Fourth, the degree to which the many international actors usually engaged in post-agreement contexts have little knowledge or experience of mediation could be partly offset by renewed efforts within the mediation community to develop shared standards of practice, expectations of performance, and complementary support systems across institutions. Greater professionalisation of the field, done intelligently, would contribute to improving the understanding of mediation within organisations or agencies that don't 'do mediation' about what continuing mediation entails and how it links to their work.

Fifth, and an old but persistent point, the risk of mixed messages (and therefore ineffective mediation) requires a particular clarity about international lead, which most likely should be the SRSG or equivalent. This does not mean that he or she is necessarily the mediator of first resort in post-agreement contexts. Indeed, for the reasons noted above, there may be a strong argument for using different mediators, depending on the sensitivities of the parties to further international mediation, the substantive issues at stake, the relationship of those issues to a broader international mandate, and basic determination of who would conduct the most effective mediation of a new dispute. However, there does need to be a reasonably unified international strategy, which, arguably, is most sensibly driven from the field.

This may be a contentious point in the increasingly crowded arena of international peace work, but it is crucial. The move within the UN system toward integrated missions has been spurred

⁵ The Peacebuilding Commission, as it matures as an institution, is worth watching in this regard, where it appeared to have played this role quite effectively in Burundi in close cooperation with the Executive Representative of the Secretary-General on the ground.

by precisely this concern about the need for ‘unity of effort’ among the key elements of a post-agreement presence – principally troops, diplomats and donors, to put it simply. Integrated missions are only a partial solution, however, as they remain a structural remedy (if by and large a tonic one) to what remains essentially a political and bureaucratic challenge.

Even more basic is an underlying substantive challenge, or ‘strategic deficit’, that tends to affect the various dimensions of international response to ongoing peace processes. For all the planning tools in capitals and headquarters and the field, there is still no consistently reliable mechanism for international actors to forge a well-informed, genuinely shared, overall strategy for peace consolidation in particular countries, which would in turn shape the contours of their respective engagements and the relative utility of instruments like mediation.

This remains problematic independent of different views of how decisively post-conflict authorities (or their citizens) should themselves determine grand strategies for peace consolidation. Only in rare circumstances will post-conflict national authorities have anywhere near enough leverage, or their own unity of effort, to exert real discipline on international actors – so the challenge remains in terms of strategy and coherence. Indeed, this challenge is arguably heightened by the contemporary preference for negotiated settlement (rather than military victory or defeat), which necessarily produces complex outcomes with commonly high degrees of irresolution. That further mediation may be required is unsurprising. The challenge remains to render it, along with the panoply of other international instruments and tools, more strategically and enduringly effective.

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