



**Mediators' Retreat  
Oslo, June 10-11<sup>th</sup> 2004**

**Summary Report**

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# I. Introduction

This was the second retreat of its kind, organised by the Centre for Humanitarian Dialogue and the Ministry of Foreign Affairs of the Government of Norway to bring together an expanded, but still small group of senior conflict mediators<sup>i</sup>. The retreat centred on key themes emerging from last year's discussion, whose scene was set with a range of background papers designed to stimulate discussion. These themes were:

- Conflict trends and the future of mediation<sup>ii</sup>
- Asymmetric mediation – engaging armed groups in peace processes<sup>iii</sup>
- Monitoring and verification – identifying best practice<sup>iv</sup>
- International criminal jurisdiction – risks and opportunities<sup>v</sup>

This report is intended as a summary document for those interested in the subject of conflict mediation.

## II. Summary

The chairs, opening the retreat, touched on the theme of building international capacity for mediation, focussing in particular on how to achieve sustainability of support to long-drawn out, hot and cold peace processes, and the qualities essential in the mediator, including patience, endurance, persistence and wisdom. Although the international community's capacity to find solutions to conflict remained a relevant broad theme throughout, the specific discussions focussed very much on the sharp end of how today's mediators can enhance their efforts and effectiveness in a world of evolving conflicts.

The **key conclusions** which emerged from the two-day session included:

- The issue of how to confront the dilemmas presented by individual conflicts, and move forward from these. Future retreats would benefit from an element of the case-study approach to balance more generic discussions.
- The need to match energy, imagination and risk-taking of input to precisely those moments of the process which are the most difficult, dangerous or stagnant. Mediation is art not science.
- The recognition that there are valuable roles for a variety of actors, but that this diversity raises issues of coherence, coordination and role allocation which have not yet been well handled.
- The need for a set of guidelines (at least for the UN, which could be useable by others) for how to engage with armed groups, while at the same time allowing for flexibility according to circumstances.
- The need for some kind of repository or clearing house for experience, both political and practical, on issues relating to specific cases of mediation, and common obstacles faced.

### III. Conflict Trends – the Future of Mediation

#### Key themes

- Conflict has changed – its causes, the drivers of its perpetuation, the parties to it and the way it is conducted,
- Military solutions to internal conflicts will remain elusive, thus strengthening the need for political, mediated solutions;
- The increasing location of theatres of conflict amongst civilian populations means that civilian protection is increasingly eroded, and conflict is perpetuated;
- Mediators of all kinds need to consider more deeply how far back in conflict's causal chain the work of mediation goes, or should go.

Discussion centred around the seeds of conflict which are very evident today, rather than those which may be of more relevance in the future. Thus issues of increasing socio-economic divisions, the marginalisation of groups, and environmental degradation as conflict sources were recognised as rational causes, but less as factors relevant or amenable to the mediators' work today. In general, resource issues (over e.g. coltan, diamonds, general war profiteering) were seen more as factors perpetuating conflict than lying at its very roots.

The presentation focussed particularly on the changing ends to which we use military force today, and the shift of the battlefield to civilian arenas. It also mentioned the long and unpredictable timeframe of operations, the new objective of not losing men in battle (as opposed to expecting to lose a certain number), and our tendency to use old weapons and old organisations for new jobs.

Military force, it was argued, has become the supporting actor in situations where the true strategic ends are malleable and political: these days we try to influence people's intentions, we don't aim simply to destroy or overcome them by force. States act in groups because single electorates almost never support single efforts on foreign soil any more. Furthermore, it is in the interests of the weaker, frequently non-state party to the conflict, to conduct conflict amongst the people because conventional weapons are now too powerful to risk the open battlefield, while those very civilians are key providers of resources and logistics. Finally the media, responding always to where the noise is loudest, or factional interest the most able to co-opt it, plays a critical role.

The image was introduced of the governing elites inhabiting "the stockades", while the armed groups live in "the ghettos". Questions remain about where mediators should base themselves in order to move between the two and avoid stalemates from being stigmatised as linked to "the other side". The recognition that there is not a military answer to an insurgency conflict was broadly shared. The most important thing, it was agreed, is to bring people to the table and then keep them talking. It was noted that numerically smaller forces today can force larger forces to lose, and that negotiation is most frequently the only way to reach a solution.

A shared vision of the reality was expressed: that we will face more conflicts, mostly internal, and that armed groups will proliferate, becoming more sophisticated, educated, experienced and probably violent. But how can we accelerate the learning curve of our reaction? And should mediators shift or expand their paradigm to look at underlying causes (which are by definition more difficult, and which states thus tend to resist addressing)? The reason the military often gets to these realisations first is that it is their people who are dying. These questions remain to be tackled.

Another shared perception was the potential for non-traditional actors to play a role, especially to help out with problematic institutional fits: there are tasks a single government can take on that the UN cannot, and that a private body might undertake that neither the UN nor governments can. However, there is a felt lack of authority as to who should determine who is best suited to do what in particular situations. There was agreement that the firewall concept is useful, meaning that clear distinctions between those who mediate and those who monitor agreements are helpful, especially in achieving impartiality; conversely, it was also argued that the level of understanding of a peace agreement required either to implement or monitor its implementation effectively can only be acquired through some degree of involvement in its negotiations. A factor not to be neglected was identified: whether your role is in facilitation, negotiation, or implementation, you become part of the guarantee to the process and thus implicated in its success or failure.

## IV. Asymmetric Mediation – engaging armed groups in peace processes

### Key themes

- “Demand clear ground rules and structures.. but leave space for seduction”;
- Terrorist listings, whether with or (as currently) without clear definitions, may create more problems than they solve;
- An accessible repository for mediators’ experiences (both practical and political) is needed;
- Practical tips on successful negotiations: one on one, small group and informal talks, are the best; breaks between sessions, and between whole meetings must be engineered;
- Strength and weakness may lie on different sides at different points in the process; we should not always assume it is the armed groups who lack capacity.

Perhaps the major lacuna felt on the ground is that there is no clear guideline for mediators on decisions on when to engage or disengage, who to engage, and who is beyond the pale of engagement. Examples were given of groups that want to identify as “good”, “different from Al Qaeda”, a desire which could be used as a lever to more acceptable strategies and behaviours. However, the participants were also clear that while a framework would help, there must always be flexibility of interpretation based on the best possible local analysis.

A challenge in some cases is to move things forward without giving the contours of the final settlement, which may have a negative impact on talks. A critical factor determining the legitimacy of engagement might be whether armed groups have significant legitimate political aims supported by a significant portion of the population. Having a political process for discussion, or dealing with armed groups which have a political wing, or which are politically accountable in some way, were seen by the participants as important ingredients in avoiding a disappointingly quick recourse back to military conflict. In general, it was felt that the practice of entirely outlawing terrorists is an unhelpful one, especially in the absence of clear definitions. Not only is there potential for abuse, but it has the effect of limiting the space for talking.

But if, as expected, armed groups become more violent, and if the body of international humanitarian and human rights law continues on its current trajectory of development, it will get harder and harder to meet with them. Mediators need to consider the “them” and “us” perspectives from both sides; attempts to strive for impartiality may be misperceived by either side, and yet building and maintaining trust is also critical. Even though the use of intelligence will remain problematic, psychological approaches remain invaluable.

It is important to remember that what mediators may consider to be unalterable principles – such as those of international humanitarian law – other groups may consider an ideology designed aggressively against them and their own values.

On negotiations themselves, the participants were clear: the smaller the circle of negotiations, the better it is and best of all is one to one; informal settings are almost universally preferred to formal ones. Where formality is inevitable, ensuring equality at the negotiating table is also critical, and will involve cunning thinking to avoid talks being held hostage to issues of placement, flags, or delegation size, for example. Making time, during and between meetings, is crucial, regardless of how well the talks are going. Mediators need to remember that leaders of armed groups need to sell the accord that is made to their movements.

The implementation of accords may be harder than getting them signed, and accords requiring the underlying causes of conflict and reform of society to be addressed will be the hardest of all. The time six months after the accord can be the most dangerous time of all, in terms of its ability to hold. Humanitarian and human rights steps in accords can be used as building blocks to “bring groups in”: the ensuing access to the civilian population will show armed groups that they have responsibilities to them, attention to which may yield political dividends. However, it is important when looking at options for armed groups to make commitments to international principles, that there are real means for monitoring and verifying their compliance.

The importance of local analysis was stressed again, highlighting the need to recognise and engage with the local centre of power – which may be paramilitary, the private sector, a regional state power or another entity. Only a mediator’s informed judgement can tell them how best to send messages, when to be tough, or when to be conciliatory.

Both Track One and Track Two type organisations<sup>vi</sup> will have roles. In particular, it was felt that certain small states, considered to be more independent (or at least less problematically aligned than others) to do this, might play a role in the model of that of Norway, for example Switzerland, New Zealand or Ireland. To aid such increased, shared effort, a practical repository of issues, answers and questions was suggested, an entity which would collect knowledge gathered on the practical and political aspects of engaging armed groups in peace processes.

A discussion on the role of the press confirmed that lack of time, principally, leads to the simplistic black and white press analyses that insiders to situations bemoan. No one, it was felt, has yet mastered the art of talking to the press.

Finally, the strength and weakness of the parties may vary according to the point in the process, for example as to who can call the shots about re-opening talks after a stagnant period. Sometimes pre-emptively providing draft proposals can give one side an advantage; sometimes the political context, such as the need to be seen to be doing something about the problem in the run up to an election, will favour what seemed like the weaker side over the other.

## V. Monitoring and Verification

### Key themes

- The role of regional organisations is growing, and there is an increasing number of possible actors for negotiation and monitoring; but this raises unsolved questions about coordination, and the authority to assign and assume roles
- There is a need for more clarity on the mediator's role: can s/he be "judge and prosecutor" (meaning mediator and monitor) at the same time?

In general ceasefires are fewer and further between than they used to be, and are only one element of the process – possibly the least complex part, and the one most amenable to the available competent technical advice. Perhaps the most interesting aspect is to consider what the goals of both parties are and thus what political event has to occur for the declaration of ceasefire to be triggered into action.

There is some divergence on whether mediators should or should not be implementers. On the one hand, without being part of the negotiation, a responsible body will be handicapped in its ability to implement an agreement it does not fully understand. But on the other, can one be prosecutor and judge at same time? Bodies perceived as more naturally independent, like the UN, can have a certain moral force or legitimacy, but may lack resources and power.

On the subject of the possible actors involved, there is an argument that groupings of states work better than single actors as they can more easily avoid the perception of bias

problem. Civil society should have a strong supporting role and can be valuable in strengthening monitoring and spreading messages. The growing number of available, competent actors does not negate the need for UN involvement in many cases. One reason for this is the need to be in touch with key institutions and their decision making processes, such as the UN Security Council, or the new Peace and Security Council of the African Union. On regional organisations, there was some discussion about whether they are in all cases best placed to develop an appropriate relationship of confidence with the belligerents.

Optimally ceasefires should not merely be signable, but built to last. Mediators and monitors should be aware that parties may use ceasefires simply to stall a final settlement, or to rearm themselves for a return to conflict; or they may stall the broader peace process by stalling on conducting further meetings until the ceasefire expires. This last issue makes the prescription of a clear meeting schedule critical. Furthermore, experience suggests that if sinister deals are made in the process of reaching settlement, the prospects for a failed or weakened state succeeding and becoming a functional member of the international community diminish. The timing is critical, as is the realisation that for at least one side, arms may be all they have, which is an important factor in negotiating disarmament, demobilisation and reintegration clauses. It was suggested that the whole question of how weapons surrender and storage is managed is a recurring technical issue of some complexity, the options within which might merit further discussion with specialists. Another practical question is how an armed group maintains its members' livelihoods during this period; if they are forced to resort to extortion, the return to conflict is likely to be faster.

Perhaps the key issue is how to respond to ceasefire violations, and doing so with clarity. An ongoing problem is how to handle violations supported by strong suspicion, but not clear proof. It was suggested again that points like these, embedded where possible (for confidentiality reasons) in their appropriate case studies, should be collected in some kind of repository or clearing house. There are differing views on whether this is a UN role, or one which an independent organisation could perform.

The timelines for reform processes in the post-conflict period, not least the building or strengthening of key institutions (such as the police) are much longer than the ceasefire or peace process. Getting something like the police wrong can be a trigger for return to war. The police function has been a particular thorn in the side of peace deals, given the difficulty of establishing what a normal police function should be under the tense circumstances of conflict and ceasefire. This particular aspect was suggested as something deserving further attention. Other issues to pursue might be planning capacity, and the mobilisation of international diplomatic and "groups of friends" support for such peace-keeping and support missions.



## VI. International Criminal Jurisdiction – risks and opportunities

### Key Themes

- The International Criminal Court is in its infancy, but is a growing fact of life; though in some cases it may present problems for mediators, they will need to adjust to it;
- It has positive and negative implications for the operational work of mediators, although UN Mediators have been constrained in similar ways since the Secretary General's guidelines to Special Representatives of the Secretary General were promulgated; but it can actively assist the mediators' work;
- More discussion is needed between international criminal lawyers, International Criminal Court specialists, and mediators so that both groups can better understand each others' objectives, constraints and concerns.

A central dilemma is that while it is desirable that mediators mitigate ongoing human rights violations, and while it is recognised that respecting the rights of all is crucial for the durability of peace agreement, it is precisely these kinds of issues and those of threatened loss of immunity from prosecution which can undermine peace processes at their most fragile stage. The question was raised as to whether different kinds of mediators have different responsibilities in this respect. Further, there was a question as to whether non-UN mediators might use the guidelines in this regard which are given by the Secretary General to Special Representatives of the Secretary General, as a kind of normative guideline.

While explaining the limitations of the court in terms of its jurisdiction (which does not cover the relevant crimes committed before 1<sup>st</sup> July 2002, and is relevant to crimes committed on the territory or by the nationals of a state party, or if referred by the UN Security Council), the presentation noted that the Security Council role is obviously restrained by the current US position on the ICC, but that it remains a powerful tool. The US has also indicated its fear of a rogue prosecutor, although current practice and the court's own review processes in this regard seem to counteract this.

Four questions for mediators were suggested:

1. What discretion does prosecutor have, and what is the possible impact on a country's (in)stability?
2. What is the role of the Security Council and its impact on mediations?
3. Will the prosecutor use secret indictments and will states be required to comply in, for example, carrying out arrests?
4. Will amnesties or alternatives to prosecution be accepted under this regime?

The first question is answered by the so-called "interests of justice test" which indicates that prosecutions should wait until the risk of substantial instability subsided. Mediators should convey concerns they have on this to the prosecutor.

The second has not really had relevance yet, and is hard to imagine. The Security Council can also request one year deferrals, which are designed to help in cases where prosecution may inappropriately hinder conflict resolution, and which has so far only been used abusively by the US to require generic deferral for all UN mandated peacekeepers.

On the third, a similar answer was given, that these concerns may possibly be real, but that at this point action along these lines seems unlikely.

Finally, on the fourth, the clear intention is that accountability not be avoided, thus alternative mechanisms which ensure accountability are likely to be acceptable, whereas those which promote impunity will not. A question arises over sham processes, like the Jakarta trials for the 1999 violence in East Timor. Essentially there is no amnesty for the defined major crimes, which may undoubtedly have the effect of making it harder for those who fear such prosecution to be persuaded to give up the power they believe protects them.

Three main ways were put forward in which the ICC may assist mediators:

1. It allows greater clarity for parties in conflicts in understanding that accountability has to be part of solution.
2. ICC involvement may assist in allowing negotiators a stronger hand in deciding which parties sit at the table.
3. It limits issues for mediation; by taking certain matters, like negotiating amnesties, out of mediators' hands, it frees them up for involvement in seeking alternative mechanisms.

The ICC is seen as a leap forward for mankind in terms of accountability and the promotion of universal human rights, and is a fact of life with which everyone must deal. Concerns for mediators might include whether mediators might be subpoenaed to provide information, which is considered very unlikely; also how to ensure discreet discussion with and information provision to the prosecutor in a way which does not jeopardise his integrity or provide fuel for spoilers; finally the issue was raised of possible criminal responsibility for mediators who may be in possession of relevant information and thus become an accessory.

What is clear is that assurances of immunity can never be given – nor could they ever by UN mediators under the Secretary General's guidelines. But the question remains as to whether many of the top offenders, either individuals or states, will ever be found in the dock.

Given the tender age of the ICC, much of this must remain speculation, but the group was agreed this session represented an important, if still preliminary interchange between the world of mediation and of human rights.

## VII. Conclusion

### *Building International Capacity – ideas for further reflection*

There is a need to work on multiple layers in parallel, to prevent conflict, to address the underlying causes of present and future conflict, and to contain current conflict. The relationship between ways to reduce abuses and achieve peace is complicated, suggesting that a model of loose coordination and multi-tasking must characterise effective efforts. Two functions may be useful:

1. A way of convening all parts of the system for information sharing, an effort towards which a meeting like this is a helpful beginning: this should be done for single conflicts as well as across conflicts.
2. A way to capture and transmit the knowledge, wisdom, and insights both practical and conceptual which are born of these experiences.

It is inevitable for mediators that most of their time is dedicated to dealing with current conflicts, to the possible detriment of longer-term thinking on the subject. A clearing house which combined collecting lessons, cases, issues and resources on conflict mediation together with the possibility for strategic thinking, analysis and the provision of training would be invaluable; but it remains an open question as to whether an institution like the Department of Political Affairs, or an independent body (for example the Centre for Humanitarian Dialogue, the United States Institute for Peace or a European equivalent, or the International Peace Academy ) would be the most appropriate. The need to be partnership-oriented and collaborative was seen as key, but recognised as often hard to achieve. The idea of encouraging “other Norways” was interesting to participants.

Given the variety of situations, experiences and tools on the table, it was suggested that it would be impossible to capture generic formats; however, an attempt to subject case studies to a broad analytical framework could produce very useful comparative results. Another idea is to gather a group of leaders from situations where peace has been achieved, and to ask them to evaluate the peace-making process which was visited upon them. Bringing some of these difficult issues out in a forum including key actors like the European Union, the United States, the Security Council and its ambassadors could be very valuable, and might be constructively achieved as a side event to an international forum such as Davos. The guidelines for Special Representatives of the Secretary General were felt to provide a useful starting point for a discussion session across the range of actors, including perspectives from the fields of economics, the military and so forth. The suggestion of meeting in another conflict zone as a live case study was raised, to use each other as expert sounding boards. There was strong support to continue this network through an annual meeting, and possibly through email exchange, and the organisers were encouraged to think of ways to promote more informal exchange and information sharing.

## VIII. Annexe One

### *Participants at the Mediators Retreat, 2004*

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**Mr. James LeMoyne**

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United Nations Special Coordinator for the Middle East Peace Process

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<sup>i</sup> see participants' list in annexe 1

<sup>ii</sup> See Background Paper One, *Trends in Conflict 2010-2030*, Professor Paul Rogers

<sup>iii</sup> see Background Paper Two, *Asymmetric Mediation – Armed Groups and Peace Processes*, David Petrasek

<sup>iv</sup> See Background Paper Three, *Ceasefire Monitoring and Verification – Identifying Best Practice*, Antonia Potter

<sup>v</sup> See Background Paper Four, *The International Criminal Court and Conflict mediation*, Paul Seils and Marieke Wierda (ICTJ)

<sup>vi</sup> Track One refers to the formal official level (government, United Nations, other bilateral, multilateral, regional organisations): Track Two refers to civil society or non governmental organisations