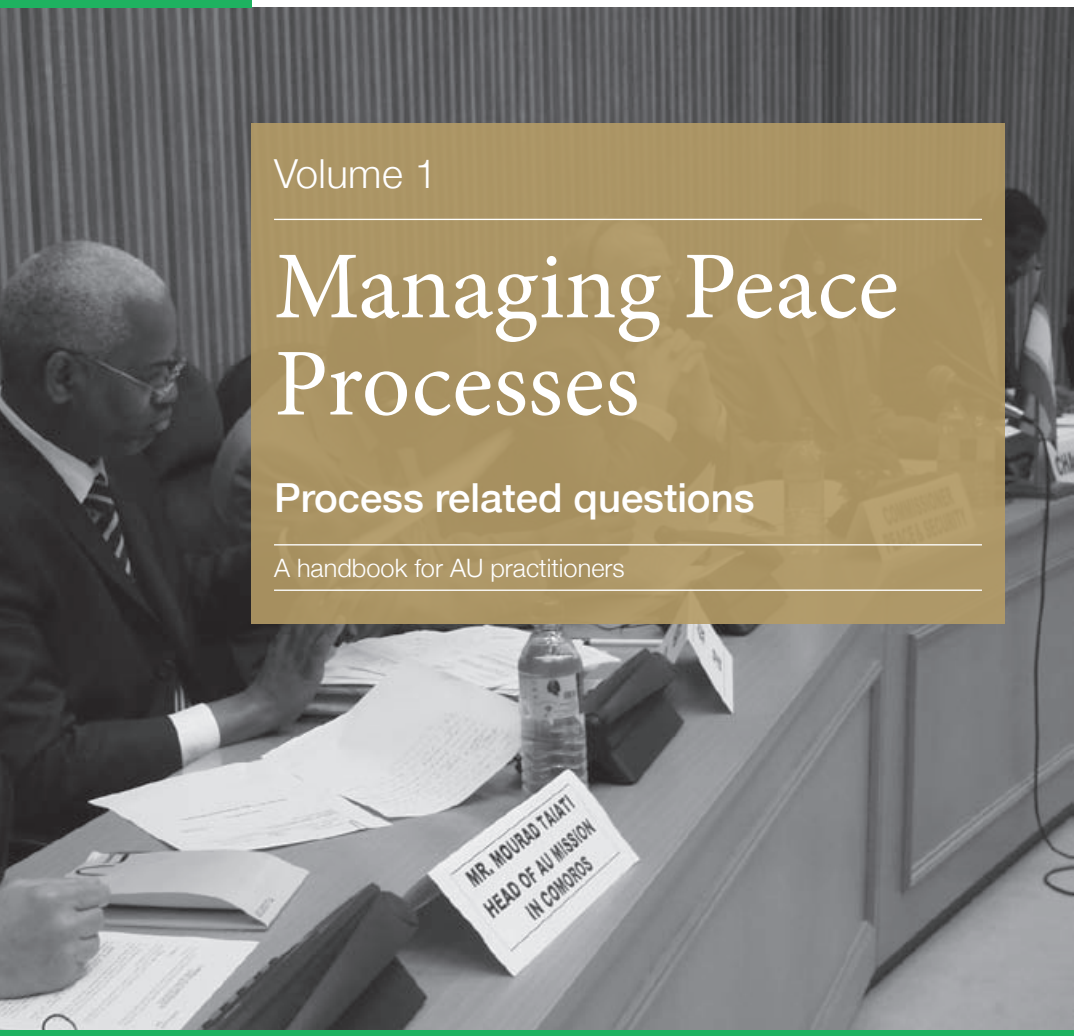


Volume 1

# Managing Peace Processes

## Process related questions

A handbook for AU practitioners

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# Contents


Chapter 1: Conflict analysis in peace processes: pitfalls and potential remedies 11

1.1 Introduction 11
1.2 Explanation of basic concepts 12
1.3 Using conflict analysis and information management 17
1.4 Approaches to conflict analysis 21
1.5 Conclusion 33

Chapter 2: Process options and strategies in conflict settlement negotiations 35

2.1 Introduction 35
2.2 Defining the purpose of negotiations 37
2.3 Negotiation formats 39
2.4 The mandate of mediators 42
2.5 Participation 42
2.6 Agenda setting 44
2.7 Timetables for negotiations 47
2.8 Decision-making methods 49
2.9 Confidence-building and verification/monitoring measures 50
2.10 Ratification and implementation 52
2.11 Conclusion 54





Chapter 3: Confidence Building Measures (CBMs) in Peace Processes 57

3.1 Introduction 57
3.2 What are CBMs? 58
3.3 Why use CBMs? 59
3.4 Who should be involved in CBMs? 62
3.5 Different types of CBMs 62
3.6 When should CBMs be used? 68
3.7 Challenges and options 72
3.8 Ten guidelines for mediating CBMs 75
3.9 Conclusion 77

Chapter 4: Implementation of peace agreements 79

4.1 Introduction 79
4.2 The nature of today's conflicts and peace agreements 80
4.3 The main reasons for non-implementation 82
4.4 The international legal and institutional framework for dispute resolution 86
4.5 How can mediators contribute to implementation? 89
4.6 Conclusion 101

Chapter 5: Tipping the balance? Sanctions, incentives and peace processes 103

5.1 Introduction 103
5.2 International sanctions: types, trends and institutional arrangements 104
5.3 Incentives within peace processes 110
5.4 Sanctions, incentives and peace processes: opportunities and risks 112
5.5 Conclusion 122

About the authors 128

Further reading 132

Endnotes 138

Chapter 4:

# Implementation of peace agreements

Michael C. van Walt van Praag & Miek Boltjes

## 4.1 Introduction

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

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

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

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

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

## 4.2 The nature of today's conflicts and peace agreements

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

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

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

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

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

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

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

## 4.3 The main reasons for non-implementation

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

- **Lack of political will**

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

## 4.4 The international legal and institutional framework for dispute resolution

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



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

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

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

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

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

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

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

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

There are other examples of international involvement in implementation.

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

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



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

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

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

## 4.5 How can mediators contribute to implementation?

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

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

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

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

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

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

## A. DESIGNING THE PEACE PROCESS WITH IMPLEMENTATION IN MIND

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

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

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

### • Ensuring broad ownership of the process

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

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

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

### • Including confidence-building steps in the process

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

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

- **Phasing implementation**

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

- **Anticipating post-agreement fragility**

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

## B. ADDRESSING ENTRENCHMENT, POWER-SHARING AND DISPUTE RESOLUTION

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

- **Entrenchment and other guarantees**

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



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

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

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

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

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

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

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

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

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



**Box 3**

**Bougainville Agreement (2001): an inclusive process supports implementation**

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

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

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

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

- **Monitoring and verification**

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

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

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

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

- **Dispute resolution**

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

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

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

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

## C. OVERCOMING THE CHALLENGES OF FUNDING IMPLEMENTATION

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

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

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

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

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

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

## D. ENGAGING DECISION-MAKERS AND EXPERTISE TO SUPPORT IMPLEMENTATION

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

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

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

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

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

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

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

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

## 4.6 Conclusion

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

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

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

# About the authors

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Miek Boltjes has authored and edited a number of publications, including *Implementing Negotiated Agreements: the Real Challenge to Intrastate Peace* (T.M.C. Asser Press, the Hague, 2007); "From Changing Governments to Building Networks: The Evolution of Goals in the Conflict Management Group's Project in the Former Soviet Union", in *Theory and Practice in Ethnic Conflict Management: Theorizing Success and Failure* (Ross, Marc Howard, and Jay Rothman eds., St. Martin's Press, New York, 1999); and *Onderhandelen en Mediation, De Baak Managementwijzer* (De Baak, Management Centrum VNO-NCW, Noordwijk, 1997).

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

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

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# Chapter 4: Implementation of peace agreements

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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