

2-1-2010

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Alysoun Boyle

Recommended Citation

Boyle, Alysoun (2010) "A piece of the peace: designing mediated agreements to resolve disputes effectively," *ADR Bulletin*: Vol. 11: No. 8, Article 3.

Available at: <http://epublications.bond.edu.au/adr/vol11/iss8/3>

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'kon gres 2009

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An assembly for promoting
matters of common interest

Ensuring effectiveness in mediation

A piece of the peace: designing mediated agreements to resolve disputes effectively

Alysoun Boyle

This article reproduces Alysoun's presentation to the 'kon gres.

Introduction

In this 'kon gres presentation, I guided the attendees through a brief analysis of the principles of effective international peace agreements and discussion of how those principles could be extrapolated into the crafting of effective mediated agreements. Throughout the presentation, questions were posed for discussion and I have included some of those questions within this article.

Definition: peace

Although everyone believes they understand what is meant by 'peace', it is very complex, meaning different things for different people. Below are listed several definitions of 'peace' coming variously from the literature of warfare, the literature of peace and from two more generalised references.

Helmuth von Moltke (Chief of the Prussian General Staff from 1857):

Eternal peace is a dream and not even a beautiful one, while war is an element of God's world order. The better our forces on land and at sea are organised, the more comprehensively they are equipped, the readier they are for war, the more hope we have of protecting peace or of prevailing in an inevitable fight with honour and glory.

Respected author on military strategy, Edward Luttwack:

[peace] may be only a becalmed passivity, an unrecognised state of non-war rather than a negotiated peace, an armistice, or even a temporary cease-fire ... the condition of peace ... is the absence of war.

The Stockholm International Peace Research Institute (SIPRI):

[peace is] security in its most basic and ordinary sense — the security of ordinary people to live decent lives.

Wikipedia:

Peace is a term that most commonly refers to an absence of aggression, violence or hostility, but which also represents a larger concept wherein there are healthy or newly-healed interpersonal or international relationships, safety in matters of social or economic welfare, the acknowledgment of equality and fairness in political relationships and, in world matters, peacetime; a state of being absent of any war or conflict..

Oxford English Dictionary:

[Peace is] Freedom from, or cessation of, war or hostilities; the state of a nation or community in which it is not at war with another.

Whether the focus is on nations and peoples or small groups and individuals, the meanings of peace retain a common relevance.

What is conflict?

This section looks briefly at fully armed conflict.

The Uppsala Conflict Data Program (UCDP) is an internationally respected and cited centre for the statistical compilation and analysis of data related to armed conflict. It provides the following definition to underpin its data collection and analysis:

An armed conflict is a contested incompatibility that concerns



government and/or territory where the use of armed force between two parties (of which at least one is the government of a state) results in at least 25 battle-related deaths in any calendar year.

UCDP also defines 'incompatibility':

Incompatibility concerning government: concerns the type of political system, the replacement of the central government or the change of its composition

Incompatibility concerning territory: concerns the status of a territory, e.g. the change of the state in control of a certain territory (interstate conflict), secession or autonomy (intrastate conflict)

Since 1945 the overwhelming majority of armed conflicts have been intra-state (i.e. civil wars). Between 1945 and 1989, most wars were defined and perpetrated within the context of cold war tensions; governments were either 'bolstered or undermined' as part of super-Power competition. It is generally accepted that, in 1989, with the dissolution of the Soviet Union, the Cold War ended. Immediately following the dissolution of the Soviet Union it was predicted that the incidence of armed conflict would decline and so it did, briefly; however, according to UCDP, there has since been a general increase and the annual number of armed conflicts now usually sits around 30.

Between 1989 and 2007, the UCDP recorded a total of 124 active armed conflicts. Current available UCDP data shows that, in 2007 alone, there were 34 active armed conflicts around the world:

- 4 in the Middle East;
- 3 in the Americas;
- 14 in Asia;
- 14 in Africa.

What are the causes of conflict?

Rather than analyse the extensive research about the causes of human conflict, I briefly introduced research and analysis conducted by a former Secretary-General of the United Nations.

Koffi Anan:

The causes of conflict and the promotion of durable peace and sustainable development in Africa.

Koffi Anan describes the following as

being the five core causes of conflict in Africa:

- historical legacies (especially colonial rule with its political oppression, economic exclusion and lack of participation; also the disillusion arising from the failure of various peace efforts);
- factors that are internal to the warring states (including the inherited style of political power and the 'winner-takes-all' approach);
- factors that are external to the warring states (for example, influence of neighbouring states, both opposing and supportive);
- economic motives (while the conflict continues, there are financial benefits that flow from uncontrolled access to resources, as well as the benefits that flow to those who arm the warring parties);
- matters specific to any given situation.

What ends conflict — ceasefire or peace agreement?

According to UCDP, armed conflict can end in ways other than by the parties' agreement to do so — either side can be victorious or defeated, one or both sides can become too exhausted to continue, or there can be a fundamental change in the circumstances that started the conflict.

UCDP categorises terminated conflicts as follows:

- peace agreement;
- victory (to one side);
- ceasefire;
- low activity (i.e. less than 25 battle-related deaths);
- no activity.

UCDP defines 'ceasefire' as follows:

A ceasefire agreement is an agreement that is regulating the behaviour of the warring parties without addressing the incompatibility. A ceasefire agreement that addresses the incompatibility is considered to be a peace agreement in the UCDP database.

In other words, while a ceasefire does formalise the laying down of arms and results in a cessation of the immediate conflict, its limited terms prevent it from protecting the parties against further outbreaks of conflict.

The UCDP define peace agreements as:

- addressing the problem of the incompatibility, either by settling all or part of it, or by clearly outlining a process for how the warring parties plan to regulate the incompatibility;
- being seen as durable for as long as they are implemented;
- being seen to have failed when one of the parties states that the agreement is annulled, or if violence clearly shows that one or both parties have left the agreement.

The UCDP research shows that, between 1946 and 2007, only 51 of the recorded armed conflicts ended with peace agreements and a marginally lesser number of conflicts ended through ceasefire (51). The largest conflict termination category in that period has been 'little/no activity' (143) — the combatants had become too exhausted to continue.

Ineffective and effective peace agreements

Factors contributing to ineffective peace agreements

According to Dan Smith and the International Peace Research Institute (in 2005, then based in Oslo, Norway), 54% of peace agreements break down within five years of being signed. Their analysis of armed conflicts in the 1990s found the following to be key causes of that break down (these could be categorised as difficulties relating to the process of creating the treaty):

1. One side (sometimes more) is insincere, lying and cheating in the negotiations (such dishonesty is quite rare).
2. One side (sometimes more) gives only a conditional agreement — and does not make that clear during the negotiations.
3. One side (sometimes more) is too fragmented and internally divided to participate effectively in the negotiations; this internal division is often a more important determining factor for ineffective negotiations than is any division between the warring parties.
4. The consequences of the war (for example, economic, military, human, and/or social) are so great that the



country cannot yet function normally; peace cannot fulfil its promise of 'fixing everything' and the resulting disillusionment breeds the willingness to return to war.

5. The long-term causes of the original war are not addressed in the peace agreement, and those problems are not solved; the country slides back into war: there appears to be no alternative for the people and there is no leader with the capacity to guide the peace.

What makes an effective peace agreement?

Effective peace agreements cannot be designed without defining what, beyond immediate ceasefire, they are intended to achieve. Two broadly recognised primary modern sources of guidance for peace-making are reports written by former Secretaries General of the United Nations. They each define a range of attributes that make for an effective peace, and the provisions for which should be incorporated into any peace agreement.

In 1992, Boutros Boutros Ghali wrote for the UN General Assembly a report called *An Agenda for Peace*. In 1998, Koffi Anan wrote his report that has been referred to above.

- political repression.

To support effective peace, the Secretary General defined four areas of peace-related activity:

1. *Preventive diplomacy*: to remove the sources of danger before conflict could occur; easing tensions and building confidence.

2. *Peace-making*: bringing hostile parties to agreement, essentially through peaceful means; aims to resolve the issues that led to the conflict; if conflicts remain unresolved, there has been a lack of will by the parties and there has been a lack of leverage for any third party who has been chosen to assist; distinguished statesmen can bring personal prestige to encourage the parties to enter serious negotiations.

3. *Peace-keeping*: essentially this is enforcement of the peace through mechanisms such as international action, sanctions, and the deployment of UN peace-keepers.

4. *Post-conflict peace-building*: to prevent a recurrence of armed conflict; take actions that identify and support structures to strengthen peace and avoid relapse into conflict; advance confidence and well-being among people; disarm warring parties and restore order (including

Effective peace agreements cannot be designed without defining what, beyond immediate ceasefire, they are intended to achieve.

Boutros Boutros Ghali: An Agenda for Peace

In his report presented to the UN General Assembly, Boutros Boutros Ghali mentioned the numbers of war-dead killed since 1945: between 1945 and 1992 (ie since the end of World War II) there had been 100 'major conflicts' in which more than 20,000,000 had been killed.

Boutros Boutros Ghali described the key causes of conflict:

- economic despair;
- social injustice;

custody/destruction of weapons, repatriation of refugees, advising and training security personnel, monitoring elections, advancing protection of human rights, reforming/strengthening government, promoting political participation); link previously warring parties in mutually beneficial undertaking to contribute to economic and social development as well as to enhance confidence; reduce hostile perceptions; social peace is as important as strategic or political peace.



In his report, Boutros Boutros Ghali also described key elements for reducing the likelihood of conflict between states: mutual confidence and good faith, as well as timely and accurate knowledge of the 'facts'. For Boutros Boutros Ghali, effective peace maintained 'the integrity of each side while finding a balanced design for all' — surely the guiding principle for all mediators.

Koffi Anan

In his report, Koffi Anan built on his predecessor's four areas of peace-related activity: peace-making, peace-keeping, humanitarian assistance and post-conflict peace-building. This paper looks at only two of them as being immediately relevant to mediation.

1. *Peace-making*: mediation and other interventions should not stand alone, but should be supported by the creation of contextual stability and a climate for longer-term reconciliation; peace-making should aim to:

- (a) harmonise the policies and actions of external [players];
- (b) avoid proliferation of mediation efforts;
- (c) mobilise international support for the peace;
- (d) improve the effectiveness of sanctions;
- (e) stop the proliferation of arms.

2. *Post-conflict peace-building*: actions undertaken at the end of a conflict to consolidate peace and prevent a recurrence of armed confrontation; peace-building activities should be integrated to address the various factors that have caused, or are threatening, conflict; the crucial need is the security of ordinary people with real peace and access to basic social facilities; there are four key supports that are essential for effective peace-building:

- (a) time;
- (b) a multi-faceted approach including, diplomatic, political and economic factors;
- (c) adequate finance;
- (d) high-level strategic and administrative co-ordination.

In other words, for Koffi Anan, the

key objectives of post-conflict peace-building are to build a durable peace and to promote economic growth. To achieve this, he lists the following priorities:

- to encourage reconciliation and

Most mediated agreements can be likened to ceasefire agreements, encoded in language that meets legal requirements, allowing them to be enforced when they break down.

demonstrate respect for human rights;

- to foster political inclusiveness and promote national unity;
- to ensure safe, smooth and early repatriation and resettlement of refugees and displaced persons;
- to re-integrate ex-combatants and others into a productive society;
- to curtail the availability of small arms;
- to mobilise domestic and international resources for reconstruction and economic recovery.

In his report he gives prominence to respect and participation:

Respect for human rights and the rule of law are necessary components of any effort to make peace durable ...

Democratisation gives people a stake in society. Its importance cannot be overstated, for unless people feel that they have a true stake in society, lasting peace will not be possible and sustainable development will not be achieved.

For Koffi Anan, peace-building is effective only when all participants can see (not merely believe) that they are participating in and benefitting from the various peace-building activities.

What can we conclude about peace?

A ceasefire in itself does end armed conflict, but it does not create a workable and durable peace. The terms of an effective peace treaty must pre-empt and encode the attributes of a peace that will enable the ordinary

people affected by the armed conflict to start living decent lives. Over the last few decades, many in the world have recognised this as shown by some peace treaties and interstate politics in many regions.

Most mediated agreements can be likened to ceasefire agreements, encoded in language that meets legal requirements, allowing them to be enforced when they break down. How many mediated agreements would be able to comply with Dan Smith's measure of effectiveness: lasting for more than 5 years?

The research and guidance about effective peace between peoples suggests that, to be effective (that is, workable and durable), mediated agreements should be written not in the legal language of enforceability, but in terms that are meaningful to the people creating them, and they should be designed to make the parties' own agreements work.

An analysis of three peace treaties

Taking note of the attributes of durable peace discussed, and the agreements that create it, this part of the article tabulates three peace treaties, briefly analysing their process and content in light of the observations from above:

1. The Treaty of Kadesh (ca 1258BCE)
2. The Treaty of Versailles (1920)
3. The Dayton Agreement (1995).

The Treaty of Kadesh — content

This is the earliest peace treaty of which a complete copy has survived. Its terms make it the first record of a 'win/win' agreement in which there is substantial mutual benefit.



PARTIES	Pharaoh Rameses II (Egypt) and Hattusilli_ III (Hittite Empire) and their representatives
PROCESS	<ol style="list-style-type: none"> 1. 1274BCE: Four year battle preceded treaty; battle centred on then Hittite city of Kadesh (in modern area north of Lebanon); neither side clearly victorious, though both claimed to be. 2. Each party confronted additional separate conflict with other border 'states'; Egypt facing incursions by tribesmen along their western frontier, Hittites confronting Assyrian Empire to their east. 3. Negotiations lasted a considerable time — around 10 years.
CONTENT	<ul style="list-style-type: none"> • Parties identified with equal grandeur • Duration 'forever' (that is, at least two generations) • Both sides commit to 'peace and brotherhood' • Commitment demonstrated by gift in marriage of Hittite ruler's daughter to Rameses II • Each side commits not to invade other • Reaffirmation of original relationship • Defensive alliance (each to come to aid of other if requested — including external and internal threats) • Extradition of refugees • Witnesses and enforcement from equal number of gods with similar status from each side
RECORDS	Copies of treaty retained in Egypt (carved into Temple at Karnak) and at then Hittite capital, Hattusas; Egyptian copy was written in hieroglyphs and Hittite in Akkadian cuneiform script (Akkadian being 'diplomatic language' of the day).
DURABILITY	<p>Hittites and Egyptians had vested interest in upholding terms of treaty:</p> <ul style="list-style-type: none"> • neither could invade other's land • each undertook to protect other from invasion • each empire retained its position of power and authority • both parties responsible for ensuring mutually beneficial status quo maintained <p>Terms of treaty created powerful alliance between the two empires and were used successfully to repel common enemies.</p>

The Treaty of Versailles — process

There are extensive records, reports and analyses of the process that resulted in this document and there are numerous histories of the exceptionally destructive war that preceded it. This

treaty is widely recognised to have been ineffective as a means of keeping the peace. Its terms did not create a mutual vested interest in its implementation, nor was it created during negotiations between both sides.

This treaty includes over 450

separate clauses, excluding Appendices. It also included the terms for establishing the League of Nations — with the exclusion of Germany and its allies. For the purposes of this paper, I will describe in brief only *the process* that led to its signing.

PARTIES	'High contracting parties': Britain, France, USA, Italy
PROCESS	<ol style="list-style-type: none"> 1. October 1918: German government and Woodrow Wilson (USA) agreed to accept Wilson's proposed 14 points. 2. Meanwhile, in last years of war, England, France and Italy made secret treaties with Greece, Romania and each other. 3. Allies demanded German compensation and terms that protected their own secret agreements. 4. Final treaty drafted during Paris Peace Conference Jan 1919 5. Conference dominated by 'High Contracting Parties': Britain (Lloyd George), France (Georges Clemenceau — Conference Chair), USA (Woodrow Wilson) and Italy (Vittorio Orlando). 6. May 1919: Germany and its allies had no say in content and were presented with a <i>fait accompli</i>. 7. May 1919: German delegation writes letter of protest to Clemenceau (especially contradictions between original 14 points and final 450+ clauses. 8. May 1919: Clemenceau replies by letter dismissing protest.
CONTENT	<p>Over 450 separate clauses, excluding Appendices</p> <ul style="list-style-type: none"> • Did not include original 14 points agreed by Germany and USA • Included clauses that created the League of Nations • Excluded Germany from membership of League of Nations
RECORDS	Each signatory to the Treaty retained a copy of the final document; full text available at <www.austlii.edu.au>.
DURABILITY	<ul style="list-style-type: none"> • Sections of the treaty, such as creation of League of Nations, had strong durability; others did not, such as reparations payments to be made by Germany • May 1919: Dutch newspaper editorial condemns Treaty (at the time the Netherlands were neutral) <p>These conditions will never give peace. All Germans must feel that they wish to shake off the heavy yoke imposed by the cajoling Entente, and we fear very much that that opportunity will soon present itself... We understand the bitter feelings of the Entente countries. But that does not make these peace conditions less wrong, less dangerous to world civilization, or any less an outrage against Germany and against mankind.</p>



The Dayton Agreement/Dayton Accords — content and process

PARTIES	Serbians, Croats and Bosnians
PROCESS	<ol style="list-style-type: none"> 1. Formerly a republic within the Socialist federal Republic of Yugoslavia, Bosnia and Herzegovina proclaimed independence in 1992. 2. Three year war ensued between the three ethnic groups, Bosnians, Croats and Serbs. 3. Various military actions by Croats, government and NATO, as well as civilian massacres. 4. September/October 1995, world powers (especially USA and Russia) pressured leaders of three groups to attend negotiations in Dayton, Ohio (USA). 5. Attendees at 1995 negotiations: representatives from Serbians, (Slobodan Milosevic), Croats (Franjo Tuđman) and Bosnians (Muhammed Šabić). Representatives also attended from: USA, European Union and Russia; also present were military leaders from USA and UK. 6. December 1995: Paris agreement signed by Serb, Croat and Bosnian representatives and witnessed by Contact Group nations: French and USA Presidents, UK and Russian Prime Ministers, German Chancellor and special EU negotiator. 7. London 1996: Paris agreement confirmed by all signatories.
CONTENT	<p>The contents of agreement covered following areas:</p> <ul style="list-style-type: none"> • Cease-fire and various military provisions, including introduction of Implementation Force (IFOR) under auspices of NATO and UN • Regional stabilisation, de-militarisation and confidence-building measures • Agreed boundaries • Free and fair elections under international supervision, with universal suffrage • Constitution with agreed central government and protection of human rights, free movement of people, goods, capital and services; central bank and single monetary system • Binding arbitration to be used for resolving disputes that arise • Guarantee of human rights and fundamental freedoms; creation of Commission on Human Rights; UN human rights agencies to monitor • Refugees and displaced person to have the right to return home, regain lost property and/or just compensation • Establishment of Commission to Preserve National Monuments • Public corporations to be established to organise transport and other public facilities • A High representative designated to oversee and protect civilian matters such as humanitarian aid, economic reconstruction, human rights and free elections • UN International Police Task Force
RECORDS	Copies retained by all signatories; full text available through <www.austlii.edu.au>.
DURABILITY	<p>Nil recommencement of armed conflict</p> <ul style="list-style-type: none"> • Most provisions promptly implemented, including elections and two year rotating Presidency • Relevant people submitted to International War Crimes Tribunal, including one signatory to the original agreement • Amnesty International reported some delay in resettlement of refugees and displaced person

Alysoun Boyle brings a wide range of professional experience to her ADR practice as a mediator, lecturer and system-designer. She is a Director of Creative Resolutions (ACT) P/L. She can be contacted at <creativeresolutions@bigpond.com>.

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