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MEDIATION AND THE AFRICAN UNION'S PANEL OF THE WISE

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In public discussion on the African Union (AU), no serious attention has been paid to the peacemaking strategy of mediation. The lack of attention reflects a broader trend in international affairs. Whereas peacekeeping, peacebuilding and peace enforcement are subjects of intense debate among politicians, academics and activists, there is no equivalent focus on international mediation. In major policy statements on peace and conflict, UN secretaries-general present considered perspectives on early warning, peace operations and other topics, but say little about mediation beyond asserting its importance.[1]

The absence of adequate consideration of the dynamics and dilemmas of international mediation is surprising given the frequency with which this form of conflict resolution is undertaken. There is scarcely a major conflict in Africa or elsewhere that has not been subject to a host of mediation efforts. The lacuna is also surprising in the African context given the importance attached to peacemaking in official documents of the AU and its predecessor, the Organisation of African Unity (OAU).

This paper proposes that the Peace and Security Council of the AU establish an expert mediation unit, and that the Panel of the Wise, a sub-structure of the Council, be constituted as this unit. The proposal is based on three core propositions: mediation should be regarded as a specialised activity that requires extensive experience and a high level of proficiency; an experienced mediator is much more likely to be successful than an inexperienced mediator; and a confidence-building approach to mediation is more likely to yield a positive outcome than coercive diplomacy. The paper first highlights the relevant provisions of the peace and security protocol of the African Union and then presents perspectives and proposals on the strategic and institutional dimensions of mediation.

The peace and security protocol of the African Union

The *Protocol Relating to the Establishment of the Peace and Security Council of the African Union*, adopted by the 1st Ordinary Session of the Assembly of the AU in Durban on 9 July

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[1] For example, B. Boutros-Ghali, *An Agenda for Peace*, New York: United Nations, 1992; B. Boutris-Ghali, 'Supplement to *An Agenda for Peace*: position paper of the Secretary-General on the occasion of the fiftieth anniversary of the United Nations', United Nations document A/50/60 – S/1995/1 (3 January 1995); and United Nations, 'The causes of conflict and the promotion of durable peace and sustainable development in Africa', Report of the United Nations Secretary-General to the Security Council (16 April 1998).

2002, establishes a Peace and Security Council within the AU as a standing decision-making organ for the prevention, management and resolution of conflicts (Article 2). Its objectives include anticipating and preventing conflict, and peacemaking and peacebuilding functions for the resolution of conflicts (Article 3(b)). Its functions include early warning, preventive diplomacy, and peacemaking through the use of good offices, mediation, conciliation and enquiry (Article 6).

The Council is empowered to take initiatives and action it deems appropriate with regard to situations of potential and actual conflict (Article 9(1)). To that end, it uses its discretion to effect entry, whether through the collective intervention of the Council or through its Chairperson and/or the Chairperson of the Commission (i.e. the Secretariat of the AU), the Panel of the Wise, and/or in collaboration with regional mechanisms for conflict prevention, management and resolution (Article 9(2)). The Council may establish subsidiary bodies that include ad hoc committees for mediation, conciliation or enquiry, consisting of an individual State or group of States (Article 8(5)).

Under the authority of the Council and in consultation with all the parties involved in a conflict, the Chairperson of the Commission may take all initiatives deemed appropriate to prevent, manage and resolve conflicts (Article 10(1)). To this end, the Chairperson may bring to the attention of the Panel of the Wise any matter that, in his/her opinion, deserves their attention (Article 10(2)(b)). He/she may use his/her good offices (either personally or through special envoys, special representatives, the Panel of the Wise or the regional mechanisms) to prevent potential conflicts, resolve actual conflicts and promote peacebuilding and post-conflict reconstruction (Article 10(2)(c)).

In order to support the efforts of the Council and the Chairperson of the Commission, particularly in the area of conflict prevention, the Protocol also calls for the establishment of a Panel of the Wise (Article 11(1)), composed of five highly respected African personalities from various segments of society who have made an outstanding contribution to the cause of peace, security and development on the continent. These are to be selected by the Chairperson of the Commission after consultation with the Member States concerned, on the basis of regional representation, and will be appointed by the Assembly of Heads of State and Government to serve for three years (Article 11(2)).The Panel has the task of advising the Council and the Chairperson of the Commission on all issues pertaining to the promotion and maintenance of peace, security and stability in Africa (Article 11(3)). At the request of the Council or the Chairperson, or at its own initiative, the Panel might undertake such action as deemed appropriate to support the efforts of the Council and the Chairperson for the prevention of conflicts, and to pronounce itself on issues relating to the promotion and maintenance of peace, security and stability in Africa (Article 11(4)).

Strategic considerations

The need for a confidence-building approach to mediation

The key to effective mediation lies in understanding, managing and transforming the political and psychological dynamics of serious conflict that make disputant parties fiercely resistant to negotiations. Whatever the specific causes and features of a given conflict, these dynamics can be described in general terms: the parties regard each other with deep mistrust and animosity; they believe that their differences are irreconcilable; they consider their own

position to be non-negotiable; and they fear that a negotiated settlement will lead to unacceptable compromises.

These visceral concerns are acute where large-scale killing has occurred and where identity, security, freedom and justice are at stake. The concerns are both a product of conflict and, more importantly, obstacles to its resolution. They give rise to a profound lack of confidence in negotiations as a means to achieving a satisfactory outcome even when the cost of hostilities is high and the parties recognise that there is no possibility of military victory.

Mediation is a method of mitigating the concerns through the presence and support of an intermediary peacemaker who is not party to the conflict, who enjoys the trust of the disputants, and whose goal is to help them to forge agreements they find acceptable. By virtue of these characteristics the mediator serves as both a buffer and a bridge between the antagonists, ameliorating the anger and suspicion that prevent them from addressing in a co-operative manner the substantive issues in dispute. The parties' common trust in the mediator offsets their mutual distrust and raises their confidence in negotiations.

Unlike an arbitrator who might rule in favour of one of the disputants, and unlike a partisan actor whose interests are inimical to those of a disputant, a mediator seeks to facilitate agreements in an even-handed fashion and on terms acceptable to the parties. These features of mediation render the process a non-threatening venture and mitigate the pathology of distrust. In the Mozambican peace process, for example, Renamo agreed to engage in talks with Frelimo but refused to proceed without a mediator, insisting that a mediator would compensate for the absence of trust between the parties.[2] In short, confidence-building reflects the basic logic and utility of mediation.

Coercive diplomacy relies on leverage to pressurise the parties into a settlement, often against their wishes. Confidence-building mediation, on the other hand, can be defined as a process of facilitated dialogue and negotiation in which a third party assists adversaries, with their consent, to manage or resolve their conflict by accommodating each other's fears and needs. The consensual and voluntary nature of mediation is so fundamental that it can be regarded as a defining feature of the process.[3]

The emphasis on building trust and promoting co-operative problem-solving does not derive from an idealistic assumption that the disputant parties and their positions and conduct are legitimate; in most protracted conflicts wracked by large-scale violence, one or more of the parties pursues an illegitimate cause and violates fundamental human rights and other international norms. The key assumption of confidence-building mediation is entirely pragmatic: in the absence of outright military victory, a peace agreement and its long-term sustainability require the consent and co-operation of the belligerents.

This is especially the case in civil wars since the belligerents and their constituencies are fated to co-exist within the same territory. The total defeat of a community is seldom possible, its suppression cannot be maintained indefinitely and the option of succession is rarely viable. A high level of positive interaction between the parties is consequently a prerequisite for enduring stability. Stability is most likely to be achieved through a negotiated settlement that meets their fears and aspirations; the establishment of a democratic

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[2] C. Hume, *Ending Mozambique's War*, Washington DC: US Institute for Peace, 1994, pp.33-34.
[3] For example, United Nations, *Handbook on the Peaceful Settlement of Disputes between States*, New York: United Nations, 1992, pp.33-45.

dispensation; and post-war reconstruction programmes that address socio-economic deprivation and inequity. Despite the inevitability of competition and low-level conflict in a democracy, these are intrinsically co-operative and consensual endeavours.

Three strategic implications of the emphasis on trust, confidence-building and co-operation in mediation initiatives are discussed below: mediators should not be partisan; mediators should not engage in punitive action; and the parties must own the settlement.

The need for mediators to be non-partisan

Parties locked in deep-rooted conflict regard each other with extreme mistrust and animosity. They hold entrenched positions and view the conflict in zero-sum terms. From their perspective, negotiations entail talking to 'the enemy' and the prospect of compromising core values in order to reach a settlement. The parties fear that they will lose face in the eyes of their supporters and be outmanoeuvred by their opponent's negotiating tactics. They are consequently reluctant to engage in peace talks even when they have begun to contemplate a resolution to the conflict.

Through the presence and support of a trusted third party, mediation can provide a relatively calm and safe space for the adversaries to articulate and explore ways of meeting their respective concerns. Given their anxiety that negotiations may lead to an unfavourable outcome, their trust in the mediator is a critical factor. Above all, they expect the mediator to be non-partisan and fair. Any display of substantial bias by the mediator will be viewed as a breach of trust and may scupper the initiative. As illustrated by the following examples, a mediator's acceptability and effectiveness may be diminished greatly by its partisanship.

In 1989, Liberia was plunged into war when rebels led by Charles Taylor sought to oust the despotic Samuel Doe. The Economic Community of West African States (ECOWAS) formed a mediation committee and a military force known as ECOMOG. Dominated by Nigeria, which had backed Doe, ECOMOG destroyed its claim to neutrality by targeting Taylor and arming rival factions.[4] According to Anthony Nyakyi, the UN Secretary-General's Special Representative to Liberia, the enmity between Taylor and Nigeria was the main impediment to securing a lasting peace agreement.[5]

When the elected Hutu government in Burundi collapsed in 1996, Major Pierre Buyoya and the predominantly Tutsi army assumed power through a coup. Neighbouring states immediately imposed sanctions on the country with the endorsement of former President Nyerere of Tanzania, then the official mediator for Burundi. The Buyoya regime pursued negotiations and forged a partnership with some of its internal opponents but it resisted the external peace process hosted by Nyerere and called repeatedly for his resignation on the grounds that he was anti-Tutsi. Prior to the suspension of sanctions in 1999, the controversy

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[4] H. Howe, 'Lessons of Liberia: ECOMOG and regional peacekeeping', *International Security*, 21:3 (1996/97), pp.145-176; W. Ofuatey-Kodjoe, 'Regional organisations and the resolution of internal conflict: the ECOWAS intervention in Liberia', *International Peacekeeping*, 1:3 (1994), pp.261-302; M. A. Sesay, 'Collective security or collective disaster? Regional peace-keeping in West Africa', *Security Dialogue*, 26:2 (1995), pp.205-222; Nyakyi, A., Untitled paper presented at *Learning from Conflict Resolution in Africa*, Workshop on the experience of individual and institutional mediators, Mwalimu Nyerere Foundation and the Tanzanian Ministry of Foreign Affairs and International Co-operation, Arusha, 21-23 January 1998.
[5] Nyakyi (1998).

around the embargo and the tension between Buyoya and Nyerere threatened to overshadow the conflict in Burundi itself.[6]

In 1993 the UN launched UNOSOM II in Somalia with a mandate to promote reconciliation among the warring factions. After Pakistani peacekeepers were killed in an ambush, the UN embarked on a military campaign against General Aideed, the faction leader deemed responsible. In their bid to hunt him down, UN forces bombed a house and killed over fifty clan members. Menkhaus asserts that these efforts to arrest warlords:

> failed to account for the deep-rooted notion of collective responsibility in Somali political culture... Actions taken against a clan's militia leader were seen by Somalis not as justice done to an errant individual, but as a hostile action against the entire clan.[7]

Having compromised its impartial standing, the UN became too discredited to pursue its mediation efforts and departed Somalia in ignominy.[8]

There are many other examples of prospective and active mediators being rejected by a disputant party because of their actual or perceived bias: the Movement for Colonial Freedom as a mediator in Sudan in 1970;[9] South Africa, Zimbabwe and Kenya as potential mediators in Mozambique in the early 1990s;[10] Ethiopia and Egypt in the case of Somalia in 1993-1995;[11] and Egypt and Libya in relation to Sudan in 1998-1999.[12]

Conversely, the non-partisanship of international mediators has been a critical factor in their success. This was the case in the mediation conducted by the Catholic lay community of Sant' Egidio in the Mozambican civil war in 1990-1992. According to Father Romano, "our strength was exactly not having to defend any vested interest in the country but the one of a solid peace".[13] The significance of Sant' Egidio's impartiality has been highlighted by both Frelimo and Renamo negotiators involved in the peace talks.[14]

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[6] International Crisis Group, 'Burundi under siege: lift the sanctions; re-launch the peace process', *Burundi Report*, 1, (28 April 1998), p.36-50; J. Van Eck, 'Brokers in Burundi: broadening the Nyerere mediation initiative', *Track Two*, 6:1 (1997); G. Evans, 'Responding to crises in the African Great Lakes', *Adelphi Paper*, 311, London: International Institute for Strategic Studies/Oxford University Press, 1997, pp.33-39; Mthembu-Salter, G., 'A policy passed its "sell-by" date: an assessment of sanctions against Burundi', Report prepared for ActionAid, December 1998.

[7] K. Menkhaus, 'International peacebuilding and the dynamics of local and national reconciliation in Somalia, *International Peacekeeping*, 3:1 (1996), p.59.

[8] Menkhaus (1996); A. Jan, 'Peacebuilding in Somalia, *IPA Policy Briefing Series*, New York: International Peace Academy, 1996.

[9] H. Assefa, *Mediation of Civil Wars: Approaches and Strategies – The Sudan Conflict*, Boulder & London: Westview, 1987, p.94.

[10] F. C. Madeira, 'Mediation as a critical component of peace making in Africa: the Mozambique case', Paper presented at the Africa Mediation Seminar, Independent Mediation Service of South Africa and Centre for Conflict Resolution, Johannesburg, 3-5 November 1998, p.4; Hume (1994), pp.32-43.

[11] Menkhaus (1996), p.49.

[12] Integrated Regional Information Network for Central and Eastern Africa (IRIN), *Update for Central and Eastern Africa*, 601 (4 February 1999), United Nations Office for the Co-ordination of Humanitarian Affairs.

[13] A. Romano, 'Peace is possible: lessons from the Mozambique peace process', Paper presented at Learning from Conflict Resolution in Africa: Workshop on the Experience of Individual and Institutional Mediators. Mwalimu Nyerere Foundation and the Tanzanian Ministry of Foreign Affairs and International Co-operation, Arusha, 21-23 January 1998, p.7.

[14] Madeira (1998), p.8; R. M. Domingos, Untitled paper presented at Learning from Conflict Resolution in Africa: Workshop on the Experience of Individual and Institutional Mediators, Mwalimu Nyerere Foundation and the Tanzanian Ministry of Foreign Affairs and International Co-operation, Arusha, 21-23 January 1998, p.5.

One of the facilitators of the accord between the African National Congress (ANC) and the Inkatha Freedom Party (IFP) in South Africa in 1994 similarly emphasises the importance of the "non-partisanship" and "objectivity" of the mediation team led by Washington Okumu, a Kenyan businessman, and supported by the Consultative Business Movement.[15] Assefa makes the same point in respect of the successful mediation undertaken by the World Council of Churches and the All African Council of Churches in the Sudanese civil war in 1971-1972.[16]

A commitment to non-partisanship does not imply an absence of values. All mediators have cultural and political values and most of them become involved in peacemaking for normative reasons. Mediators deployed by the African Union will be obliged to operate within the framework of international and continental charters and declarations on democracy, respect for human rights, the use of force and inter-state relations. In the course of negotiations, moreover, mediators invariably form negative and positive opinions of the parties and their leaders. Nevertheless, each party expects the mediator to behave with integrity, fairness and even-handedness. It is no more likely to trust a mediator who is biased against it than a soccer team would trust a biased referee.

A commitment to non-partisanship by the members of the AU's mediation unit would not preclude other structures of the Union – such as the Assembly of Heads of State and Government, the Pan-African Parliament and the Peace and Security Council – from condemning a party engaged in conflict. Indeed, it could be argued that the *Constitutive Act of the African Union* obliges these bodies to take a strong stand against parties responsible for gross human rights violations, unconstitutional changes of government and violations of other principles contained in the Act.

The need for mediators to avoid punitive action

Violent conflict is usually characterised by the problem of one or more of the belligerents being implacably opposed to negotiations and intent on defeating its adversary through force. International or regional organisations might decide to apply enforcement measures against a party that persistently refuses to enter into negotiations, is negotiating in bad faith, or is guilty of gross human rights abuses or systematic denial of fundamental rights. As in the case of apartheid South Africa, sanctions can help to weaken an authoritarian regime to the point that it becomes receptive to a democratic settlement.

Many scholars and diplomats stress the utility of leverage in international mediation, leading to the assertion that large states with significant resources and coercive power are more effective mediators than other actors.[17] Touval maintains that the UN's lack of leverage contributes to its ineffectiveness as a mediator; its promises and threats have little credibility because the institution has no military and economic resources of its own.[18] According to

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[15] C. Coleman, 'Bringing in Buthelezi: how the IFP was drawn into the election', Interview conducted by Ron Kraybill, *Track Two*, Centre for Conflict Resolution (May/September 1994), pp.29-31.

[16] Assefa (1987), p.167.

[17] W. Smith, 'Effectiveness of the biased mediator', *Negotiation Journal*, 1:4 (1985), pp.363-371; J. Bercovitch, 'Understanding mediation's role in preventive diplomacy', *Negotiation Journal*, 12:3 (1996), pp.241-258; I. W. Zartman & S. Touval, 'Mediation: the role of third-party diplomacy and informal peacemaking', in S. J. Brown and K. M. Schraub (eds), *Resolving Third World Conflict: Challenges for a New Era*, Washington DC: US Institute for Peace, 1992, pp.241-261.

[18] S. Touval, 'Why the UN fails', *Foreign Affairs*, 73:5 (1994), pp.44-57.

Vance and Hamburg, envoys of the UN secretary-general should be familiar with "techniques to pressure parties to negotiate (e.g. sanctions or threats of force)".[19] Amoo bemoans the fact that the OAU was "endowed with very modest authority for conflict management; it [had] no coercive powers whatsoever".[20]

This position is flawed in three respects. First, mediators can succeed where their credibility and authority emanate from moral stature rather than formal power. Such mediators have included the World Council of Churches and All African Council of Churches in Sudan in 1971-1972;[21] Sant' Egidio in Mozambique;[22] and envoys of the UN secretary-general on many occasions.[23] Romano attributes Sant' Egidio's success largely to the "weakness" of non-governmental mediators who have no capacity to threaten the parties.[24] This was also true of Washington Okumu and the Consultative Business Movement in brokering agreements between the ANC and the IFP in 1994.[25] Algeria's success in resolving the Iran hostage crisis in 1980-1981 was due to its skilful diplomacy and the fact that "the power of a small state as a mediator usually resides in its neutrality and its fair treatment of all parties' basic interests and concerns".[26]

Second, a mediating body will almost certainly lose the confidence and co-operation of a party against whom it threatens or applies sanctions or military force. Punitive action destroys the mediator's credibility as an honest broker, makes the mediator a party to the conflict and undermines peace processes in numerous ways. It can embolden and thereby reinforce the intransigence of the favoured party. By heightening the insecurity of the targeted party, it can also make that party more intransigent. Coercive leverage may in fact enhance the domestic status of hard-liners, enabling them to mobilise popular support against 'external interference' and portray moderate positions as capitulation. These outcomes are hardly surprising since coercion is indisputably a major cause of large-scale violence.

By way of example, the imposition of sanctions against Burundi with the support of the mediator undermined Tutsi confidence in reconciliation. It strengthened extremist positions within the army and the minority community by intensifying their sense of vulnerability and persecution, and it exacerbated economic deprivation and inequity, which are considered to be among the root causes of the conflict.[27] The embargo gave President Buyoya a significant propaganda victory by creating the impression that the mediator was the main obstacle to securing a settlement.[28]

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[19] C. R. Vance & D. A. Hamburg, 'Pathfinders for peace: a report to the UN Secretary-General on the role of special representatives and personal envoys', *A Report of the Carnegie Commission on Preventing Deadly Conflict*, Carnegie Corporation of New York, 1997, p.14.
[20] S. G. Amoo, 'The role of the OAU: past, present, and future', in D.R. Smock (ed), *Making War and Waging Peace: Foreign Intervention in Africa*, Washington DC: US Institute for Peace, 1993, p.243.
[21] Assefa (1987).
[22] Hume (1994).
[23] B. Rivlin & L. Gordenker, *The Challenging Role of the UN Secretary-General: Making 'The Most Impossible Job in the World' Possible*, Westport, Connecticut: Praeger, 1993.
[24] Romano (1998).
[25] Coleman (1994).
[26] R. M. Slim, 'Small-state mediation in international relations: the Algerian mediation of the Iranian hostage crisis' in J. Bercovitch and J. Z. Rubin (eds), *Mediation in International Relations: Multiple Approaches to Conflict Management*, Houndmills, Hampshire & London: Macmillan, 1992, p.229.
[27] International Crisis Group (1998).
[28] Mthembu-Salter (1998).

Third, if leverage of different kinds is required in a particular case, it does not have to be exercised by the mediator. Mitchell points out that peacemaking seldom comprises a single activity pursued by a solitary agent.[29] Given the complexity of the enterprise and the variety of tasks that have to be performed, peacemaking should be viewed as a process to which different actors can contribute simultaneously or consecutively.

Mitchell's point is well illustrated by the Mozambican peace process. Neighbouring states put pressure on their allies to engage in talks and acted as interlocutors prior to the start of negotiations (i.e. Zimbabwe in respect of Frelimo, and Kenya in respect of Renamo); a religious group was selected as the mediator (i.e. the Sant' Egidio team); foreign powers provided logistical aid and technical advice to the mediators and the parties (chiefly Italy and the United States); the UN Secretary-General and certain African presidents helped to resolve deadlocks at critical junctures; Italy funded Renamo's transformation from a rebel movement into a political party; and the UN managed the implementation of the settlement.[30]

The severability of peacemaking functions is especially relevant to the issue of enforcement. For example, Picco argues that when the institution of the UN secretary-general becomes involved in determining and managing the use of force, it compromises the impartiality that is critical to its role as a mediator. He proposes that the UN's management of force should not lie with the secretary-general but should rather be sub-contracted to a coalition of states, as occurred in the Gulf War. This would allow the secretary-general to be the 'good cop' negotiator, with the Security Council playing 'bad cop' if negotiations fail.[31]

Similarly in the case of the African Union, the Assembly of Heads of State and Government may well have cause to resort to enforcement measures on occasion, but there is no good reason for the Panel of the Wise to be involved in this course of action. Punitive action against those responsible for oppression and atrocities is not intrinsically inappropriate. The contention is simply that such action should be taken by a body other than the active or prospective mediator.

The need to ensure the parties' ownership of peace settlements

Mediators deployed by states and multinational organisations frequently focus more on the solutions to a conflict than on the *process* of peacemaking. They formulate solutions, endeavour to win the parties' consent thereto and press for rapid results through a combination of persuasion and leverage. They might adopt this approach because they regard the solution as fairly obvious and consider the demands of one or more of the parties to be completely unreasonable. They might also be concerned about the high level of fatalities and the financial cost of a drawn-out engagement. Whatever their motivation, however, a mediator's confidence that he or she can quickly bring the parties to their senses is both naïve and arrogant.

The most extreme version of this approach entails the application of sanctions or military force. As argued above, mediators undermine their credibility and effectiveness when they

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[29] C. Mitchell, 'The process and stages of mediation: two Sudanese cases', in D. R. Smock (ed), *Making War and Waging Peace: Foreign Intervention in Africa*, Washington DC: US Institute for Peace, 1993, pp.139-159.
[30] Hume (1994); J. Armon *et al*. (eds), 'The Mozambican peace process in perspective', *Accord: An International Review of Peace Initiatives*, 3 (1998).
[31] G. Picco, 'The UN and the use of force: leave the Secretary-General out of it', *Foreign Affairs*, 73:5 (1994), pp.14-18.

undertake or are associated with punitive action. If a mediator attempts to thrust on the parties a solution that is inimical to their interests, they are likely to conclude that the mediator has sided with their opponent. In addition to alienating the targeted party, the mediator is unlikely to achieve any outcome that requires the long-term co-operation of that party. Agreements that are reached under duress will have scant value in the absence of a genuine commitment to peace and reconciliation.

The process by which conflict is addressed matters greatly because of the importance that the parties attach to their positions and because individuals and groups resent being treated as the object of some other body's plans. The parties will not take seriously a mediator who does not take seriously their concerns. These considerations are especially important in civil wars. The belligerents are usually motivated by an acute sense of aggrievement and the belief that their security or survival is at stake. Intent on winning the war, they are even more determined to avoid defeat. They resist efforts to force a settlement on them, regardless of whether such efforts stem from their enemy or a mediator. Moreover, the desired outcome of a negotiated settlement in a civil war is a democratic dispensation, which cannot logically or practically be *imposed* on a society.

Father Romano recalls that Sant' Egidio was put under strong pressure to end the Mozambican peace talks quickly since "every additional day more of war meant more killings". The mediators resisted this pressure on two grounds:

> the pathology of memory... heritage of almost a generation and could not be easily cancelled... here is no use in forcing people to agree on anything. The only way the process could have been successful and the reason that made it successful was that all the actors involved gained ownership.[32]

In his study of the Mozambican talks, Hume concludes similarly that "in any negotiations the parties [must] have the final word on how they negotiate and on what terms they settle". In summarising the main features of the talks, he captures perfectly the essence of a confidence-building approach to mediation:

> Both sides wanted to find an alternative to stalemate and destruction. The mediators helped the parties find that alternative. Because this conflict was essentially domestic, the solution had to be found in a new relationship between the parties. The mediators concentrated on developing mutual recognition and respect, rather than relying on outside leverage to push the parties together. Their first step was to begin a dialogue between the parties that could open the way to reconciliation. Eventually the parties could agree on their own solutions.[33]

In light of the above, the Panel of the Wise and other AU mediators should define their role as facilitating problem-solving by the protagonists rather than as solving problems for them. In order to reach the stage of co-operative problem-solving, the mediators should seek to manage and transform the parties' fears and mutual antipathy with sensitivity and patience. They should proceed at a pace with which the disputants feel comfortable and take care to avoid being seen as bullies. They should be mindful of the advice offered by a Special Representative of the UN Secretary-General who noted that peacemaking in protracted

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[32] Romano (1985), p.5.
[33] Hume (1994), p.145.

conflicts entails "long-evolving, tireless efforts" in which "patience is the greatest bravery".[34] Above all, the mediators should proceed on the premise that agreements which are not shaped and embraced by the parties have little chance of enduring.

Institutional considerations

The need for deep expertise in mediation

Over the past decade domestic mediation has evolved in many countries to the point that it is now regarded as a professional discipline. It encompasses a rich body of theory, comparative research and case studies, and a set of norms, skills and techniques. The techniques relate to diagnosing the causes of the conflict; engaging in shuttle diplomacy when adversaries refuse to talk directly to each other; designing and convening the mediation process; preparing agendas and conducting meetings; identifying common ground between the parties; and generating options for resolving deadlocks. The techniques are intended to enhance communication, facilitate co-operative problem-solving and help the parties to shift their orientation from win/lose to win/win.

By contrast, states and international organisations do not view international mediation as a specialist endeavour. Instead, international mediation is conceived and undertaken as a form of 'tough diplomacy'. The main techniques are persuasion, bargaining and the exercise of leverage, with little emphasis on the application of *mediation* skills. This tendency leads to and is reinforced by the appointment of international mediators on the basis of their political stature rather than their personal qualities and competence as mediators. Susskind and Babbit make a similar observation:

> Many times the leaders of bystanding countries are tapped to play mediator roles because of their acceptability to the parties rather than their prior mediation experience. While all experienced diplomats understand at least the rudiments of mediation, most are not skilled in the art or science of the process.[35]

Mediators who are highly proficient and experienced will not be successful in every case but they are much more likely to succeed than inexperienced mediators. They are better equipped to manage the complexities of deep-rooted conflict and the passions and intransigence of the disputant parties. They are more familiar with mediation strategies and tactics, giving them a wider range of options and tools, and they are less likely to make mistakes. All of this matters greatly in intra- and inter-state conflicts where large numbers of people are being killed. It seems absurd that states and international bodies which would not deploy untrained soldiers, police or doctors in these situations, or in any other circumstances for that matter, are willing to utilise untrained mediators.

It would therefore be a mistake to appoint retired heads of state and other national leaders to the Panel of the Wise solely on the grounds that their profile and stature will ensure their credibility with parties in conflict. Other structures of the AU will include leaders with the necessary profile and stature. The Panel's credibility should rather derive from the mediation

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[34] Quoted in D. J. Puchala, 'The Secretary-General and his special representatives', in B. Rivlin and L. Gordenker (eds), *The Challenging Role of the UN Secretary-General: Making 'The Most Impossible Job in the World' Possible*, Westport, Connecticut: Praeger, 1993, p.87.

[35] L. Susskind & E. Babbit, 'Overcoming the obstacles to effective mediation of international disputes, in J. Bercovitch & J. Z. Rubin (eds), *Mediation in International Relations: Multiple Approaches to Conflict Management*, Houndmills, Hampshire and London: Macmillan, 1992, p.46.

expertise of its members. The Panel should thus comprise people with a proven track record as mediators. These people include certain envoys of the OAU secretary-general, Africans who have served as special envoys or representatives of UN secretaries-general, and emissaries of presidents, such as Prof. Jakes Gerwel who was instrumental in resolving the Lockerbie dispute between Libya and Western countries.

Mediation cannot be undertaken in a mechanical fashion. Conflicts are dynamic processes and differ sharply from case to case. Unlike a chess player moving inanimate objects across known space and according to fixed rules, a mediator is confronted by social actors that have volition and their own agendas. Mediators must therefore be flexible, creative and responsive to changing conditions. It is nevertheless possible to develop general principles and guidelines on the basis of experience. If the Panel of the Wise is to become an expert mediation unit and avoid repeating mistakes, it should develop over time a set of lessons learnt and best practices based on critical evaluation of its own cases and previous mediation efforts in Africa and other regions.

As discussed below, the members of the Panel should have a staff of technically qualified mediators to complement their skills, ensure that they are properly supported, and provide for continuity if they are replaced at the end of their term of office. The support staff and sub-contracted resource people should include experts on particular conflict zones; on particular aspects of peacemaking negotiations (e.g. cease-fires, constitutions and electoral systems); and on common sources of conflict (e.g. borders, natural resources, civil-military relations and exclusion of minorities).

Violent conflict has a hugely destructive impact on women and those in their care. Partly but not only for this reason, millions of African women are committed to peace and many of them have great skill as peacemakers. Accordingly, the Panel and its support staff should include an equitable number of women and should be sensitive to gender concerns in the course of mediation and in the design of negotiated settlements.

The need for adequate resources

Without sufficient resources, the Panel of Wise will not be able to perform its functions properly. Financial resources are obviously important but the issue of human resources is a more important consideration. It is essential that the Panel has sufficient support staff and that these staff have the necessary expertise in mediation and other forms of peacemaking. There are several reasons for this, all of which relate to the complex, demanding and time-consuming nature of preventive diplomacy, mediation and negotiations in protracted conflict.

First, peacemaking must be pursued in a dedicated and continuous fashion. An intermittent approach is inappropriate even when the parties refuse to enter into talks or there are long periods of deadlock in the course of negotiations. Whether peacemakers are actively engaged in mediation or attempting to win the adversaries' consent to mediation, they should maintain constant communication with the parties. It is only through regular interaction that a mediator can build relationships of trust with the parties, understand their fears and needs, discern shifts in their positions and identify opportunities for compromise and breaking deadlocks.

Second, international mediators need to communicate frequently with a range of other actors that have an interest in the conflict and its outcome. Some of these actors might be playing a negative role in the conflict and some of them might be required to play a positive role. The

actors include neighbouring states; the parties' allies and patrons; foreign powers; sub-regional organisations; the Chairperson of the AU Commission, the Peace and Security Council and other structures of the AU; the United Nations; and international humanitarian agencies.

Third, mediators will not be effective if they do not have a comprehensive understanding of the peculiarities, intricacies and evolving dynamics of a conflict. They must have a fine grasp of historical, cultural and political factors and be deeply familiar with the parties, factions and leaders in conflict. A single mediator is unlikely to be able to cover this ground on his or her own.

Fourth, mediation cannot be conducted in a formulaic fashion according to a fixed recipe that guarantees success. International mediators are typically confronted by complex problems and dilemmas for which there are no obvious solutions, by objectives that are in conflict with each other and by the need to make decisions whose consequences cannot be foreseen. In exercising judgement in uncertain and volatile circumstances, it is very helpful for mediators to have a team of colleagues with whom they can consult and strategize.

In light of the above, it would not make sense for the African Union to devote substantial resources to its early warning and peace support functions but neglect its mediation function. The Panel of the Wise should have a strong contingent of support staff and sub-contracted resource people whose activities would include the following:

- maintain records of meetings and correspondence with the parties;
- undertake research and liase with country, regional and functional experts;
- monitor conflicts and the positions and activities of the parties;
- provide early warning of impending crises and of opportunities for peace initiatives;
- co-ordinate evaluations of mediation initiatives and the development of a body of lessons learnt and best practices;
- provide technical and strategic advice on mediation to the Panel;
- communicate with the adversaries and other parties as emissaries of the Panel; and
- assist in preparations for multi-party talks.

Structural arrangements

Peacemaking by multinational organisations is often prejudiced by the partisan interests of member states. When mediation is subject to decision-making by these states, the organisation functions less as a unified corporate actor than as a diplomatic arena in which the conflict is played out in an adversarial fashion. The institution may be rendered impotent by divisions within its ranks or by the formal or informal veto of a state. Competing interests within the mediating body can also be exploited by the parties and exacerbate the conflict. According to Nyakyi, "the divisions among the key ECOWAS countries involved in Liberia… was the underlying factor which emboldened the factions in their intransigence".[36]

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[36] Nyakyi (1998), p.2.

Similar concerns have been raised about mediation undertaken by the UN,[37] the OAU,[38] and the Inter-Governmental Authority on Development (IGAD).[39]

In the case of the African Union, a structural solution to this problem would lie in establishing an expert mediation unit that functions *independently* of states. The mediators could then engage in low-profile preventive diplomacy long before a conflict reaches crisis proportions and attracts the attention of plenary organs; their flexibility would not be constrained by the vested interests of member states; and they could more easily make contact with parties that had acquired pariah status. Most importantly, their impartiality and lack of coercive power would make their efforts less threatening to the parties. The mediators could advise and present reports to the Peace and Security Council and the Assembly but they would operate under the sole authority of the Chairperson of the Commission.

Proposals of this kind have been made in relation to the UN. For example, Boutros-Ghali recommended that UN secretaries-general should more frequently conduct mediation independently of the organisation's formal power structures.[40] This approach has in fact been followed productively through the deployment of special envoys of the secretary-general.[41] Vance and Hamburg propose strengthening the UN secretary-general's authority and capacity to utilise special representatives and personal envoys, without being subjected to second-guessing by the Security Council, as a low-cost and low-risk means of averting and ending large-scale violence.[42]

It has been proposed in this paper that the Panel of the Wise be constituted as the expert mediation unit of the African Union. The matter is complicated for two reasons, however. First, it is unclear whether the leaders of the AU expect the Panel to perform a predominantly mediation or advisory function. Second, the protocol on peace and security indicates that mediation could be undertaken by a range of actors other than the Panel, including the Peace and Security Council, the Chairperson of the Commission, special envoys and representatives of the Chairperson, and ad-hoc committees of states.

The main argument of this paper is that the AU should establish an expert mediation unit for the following reasons: international mediation should not be equated with coercive diplomacy but should rather be understood and pursued as a specialised activity with a particular set of skills and techniques; mediators who are experienced and competent are more likely to succeed than those who are inexperienced or inept; and poorly conducted mediation can exacerbate the conflict. If the Panel of the Wise is not set up as the AU's mediation unit, then this unit could be located elsewhere under the Chairperson of the Commission.

The mediation unit could play the following roles:

- Preventive diplomacy in a conflict prior the advent of violence.

- Facilitating dialogue through shuttle diplomacy when parties will not engage in formal negotiations.

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[37] Touval (1994).

[38] Amoo (1993).

[39] F. Deng, 'Preventive diplomacy: the case of Sudan', *Preventive Diplomacy Series*, 1, Durban: ACCORD, 1997.

[40] Boutros-Ghali (1992), pp.22-23.

[41] Rivlin & Gordenker (1993).

[42] Vance & Hamburg (1997), p.7.

- Preparing for, mediating in and managing formal negotiations.

- Assisting the parties and other agencies to resolve disputes that arise during the implementation of settlements.

- Advising the Chairperson of the Commission, the Assembly, the Council and other structures of the AU.

- Identifying appropriate activities for these bodies and other actors in support of peace processes.

- Developing and promoting lessons learnt and best practices for international mediation.

International mediators diminish the prospect of ending conflict when they deviate from the principles of confidence-building mediation and are unfamiliar with its techniques. Mediation is a specialised activity that is not a mystical affair, reducible to common sense or synonymous with coercive diplomacy. The African Union will best fulfil its mandate in relation to peace and security if it establishes a mediation unit that is independent of states and has the necessary expertise.

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