# From Armed Intra-State Conflict to a Functioning Constitutional Order

**Reconciling Principles of Third-Party Support – a Reflection**

Nicole Töpperwien

Thematic Paper

IMPRINT

Töpperwien, Nicole 2019. From Armed Intra-State Conflict to a Functioning Constitutional Order.
Reconciling Principles of Third-Party Support – a Reflection. Berlin: Berghof Foundation.

PUBLISHED BY

**Language editing:** Sohaila Abdulali
**Design and layout:** AMBERPRESS, Katja Koeberlin, Gosia Warrink

**Disclaimer**
The views expressed in this publication are those of the author and do not necessarily reflect the
views and opinions of the Berghof Foundation or its partners.

Auswärtiges Amt

# From Armed Intra-State Conflict to a Functioning Constitutional Order

**Reconciling Principles of Third-Party
Support – a Reflection**

## About this publication

This publication is part of the project *Towards Sustainable Peace: The Nexus of Peacemaking and Constitution Building*, implemented by the Berghof Foundation, in collaboration with the United Nations Mediation Support Unit – Department of Political and Peacebuilding Affairs. It was generously supported by the German Federal Foreign Office.

The project explored how peacemaking – particularly mediated peace negotiations – interfaces with constitution building in practice, a so far understudied area. It identified the challenges and opportunities at this 'nexus', the lessons learned, and policy options and their implications on sustaining peace.

To this end, a number of thematic and field studies were commissioned, desk studies were conducted, and expert roundtables, interviews and peer exchange were organised involving scholars and practitioners from the fields of mediation and constitution building. The following publications capture the insights from the project on crucial processual and substantive issues at the nexus, which are expected to be valuable for practitioners.

**Key output**
- Key considerations for practitioners working at the nexus of constitutions and peace processes

**Case studies**
- Burundi [French and English]
- Guatemala [Spanish and English]
- Republic of (North) Macedonia

**Thematic studies**
- From armed intra-state conflict to a functioning constitutional order: reconciling principles of third-party support – a reflection
- Constitution making in contexts of conflict: paying attention to process
- Critical substantive issues at the nexus of peacemaking and constitution building
- The imperative of constitutionalizing peace agreements

The publications are available online at
www.berghof-foundation.org/pmcb.

# Contents

# Introduction

The paper reflects on third-party interventions in the field of peacemaking[1] and constitution-building[2] in conflict affected contexts. It focuses on interventions that aim at facilitating agreement – for a peace agreement, a constitutional settlement and the implementation of the constitutional order. This facilitation can include establishing processes for coming to agreement and taking decisions, mediating between parties, or providing expertise and resources.

Third-party support can be provided by nationals or non-nationals with more or less distance to the context and its actors. Here, only third-party support that primarily aims at contributing to sustainable peace is considered – instead, for instance, at maximizing the influence of one party in the conflict. In particular, the paper looks at principles meant to guide such processes to which third-party interventions contribute. It does so mainly based on guiding notes that were developed for and by practitioners, e.g. by UN, EU, and relevant think tanks. It also draws on personal experience as a third-party supporter as well as exchange with other third-party supporters[3].

The paper's main argument is: Many peacemaking processes include aspects of constitution making. Sometimes this occurs openly by leading to the adoption of a new constitution or amending an existing one. Sometimes this occurs in a more hidden way by substituting or complementing aspects of the constitutional order through negotiated arrangements, e.g. by the introduction of power-sharing arrangements[4]. Equally, a substantial number of newer constitution making processes, whether in Nepal, Yemen, Somalia or Libya, are part of a broader peacebuilding process. In these cases, peace and constitution making are part and parcel of a larger peace process. This seems to lead to irreconcilable clashes between principles that tend to guide peacemaking on the one hand and constitution making on the other.

As will be argued, support to either process is primarily effective if it is based on a theory of change that considers the overall peace process as well as the different sub-processes. These include peacemaking and drafting a new constitution, but also security sector reforms or measures to work towards truth and reconciliation. If we identify principles and look at the dynamics and needs of the overall peace process, the principles become easier to reconcile or balance.

---

**1**   Peacemaking usually refers to "diplomatic efforts to end violence between conflict parties and to achieve a peace agreement. International or national peace agreements may contain de-mobilisation commitments or regulations on the future status of conflict parties. As stated in the United Nations Charter, peacemaking strategies range from negotiation, mediation and conciliation, to arbitration and judicial settlement. Sometimes economic sanctions or even military interventions to end the use of force in a conflict are considered as part of peacemaking. Civil society organisations involved in peacemaking mostly rely on non-violent strategies such as negotiation and mediation" (Berghof Foundation 2012, 60).

**2**   Constitution building refers to "processes for negotiating, drafting and implementing constitutions" (International IDEA 2011, 1).

**3**   With very few exceptions, it does not consider the multitude of academic articles focusing on peacemaking and constitution building, despite their potential usefulness also for practitioners.

**4**   See the trend to turn presidential systems into semi-presidential ones by introducing a prime minister (e.g. Mali). The factual empowerment of the position of State Councillor in Myanmar also falls into this category.

# Peace and constitution making: separate processes, separate approaches?

For a long time, peace and constitution making have been regarded as separate processes and quite different species, with distinct challenges and exigencies. In the traditional understanding, they have some similar but also some quite different objectives. For instance, peace negotiations leading to a peace agreement mainly aim to end violence and establish conditions for peace, while constitution making and the resulting constitution aim to create or maintain a social contract and to establish binding rules of the game. Their distinct objectives and functions amongst other things inform process design, the type and timing of interventions, as well as the role and sought qualities and behaviour of third-party interveners.

Based on perception – but very often not in reality – the two processes differ in the following ways:

**Participation:** While peacemaking is often seen as focusing its attention on the main parties to the conflict and potential spoilers, constitution making aims at inclusive participatory processes that give voice to all segments of society[5].

**Trust:** The peacemaking process might focus on building trust between the main conflict parties through closed-door meetings without public scrutiny. However, in constitution making and particularly in constitution building, trust-building might focus on creating general trust in institutions and processes through public consultations, participation and transparency.

**Wording:** In peacemaking, drafters might work with constructive ambiguity to move the process along with the aim to clarify the issues later. They might even include provisions with limited chances of being implemented. However, constitutions are supposed to provide unambiguous language and realistic, implementable rules to ensure the rule of law and applicability of the constitution[6].

**Decision-making procedures:** While peacemaking may break from legally established decision-making rules as long as there is sufficient consensus, constitution making follows established procedural requirements in order to secure the constitution's formal legitimacy[7].

---

5   See the approach taken in Brandt et al. (2011, 9-10).
6   In discussions based on Chatham-House rules, one of the key UN mediators once termed peace agreements as a "utopia", which nobody expects to be fully implemented. We can question whether this is a sustainable approach to peacemaking. As practice shows, constitutions can also contain ambiguous language or provisions that are difficult to implement. However, there seems to be more awareness of the importance of clear and implementable texts so that constitutionalism can develop and be maintained.
7   See Williams & Nystedt (2013).

≡ **Time:** While peacemaking is under pressure to move as fast as possible whenever there is a window of opportunity to end violence and bring quick peace dividends, supporters of constitution making processes tend to argue for longer processes to build understanding and common ownership of the emerging constitutional order.

≡ **Longer- or shorter-term perspective:** While peacemaking might put the focus on any solution that is acceptable under international law as long as it can convince parties to stop fighting, constitution making might take a longer-term view of establishing good governance.

≡ **Role of third-party interventions:** There is a relatively broad acceptance of a proactive role for third-party supporters in peacemaking processes, including designing the process, wording the agreement, proposing options or even giving incentives[8]. However, many critics regard constitution making as a sovereign process. Their view does not allow for decisive third-party involvement, except for providing expertise (on process and substance) and resources, including for capacity-building and public consultations[9].

There is a long tradition of third-party involvement in peacemaking (often as part of good offices) as well as in supporting implementation of agreements and constitutions (often as part of development cooperation). In addition, as International IDEA (2011) points out, third-party involvement in constitution making processes has increased because several constitution-building processes take place in conflict affected contexts with conflict resolution objectives[10]. Furthermore, there is also demand for third-party support for the implementation of both peace agreements and constitutions as there tend to be highly conflictual moments during implementation. Examples include disagreement on the interpretation of the text, sequencing of implementation or when one party is perceived as trying to re-open negotiations, stalling or hindering implementation[11].

In most peace processes, third parties support certain phases of the overall process from conflict to sustainable peace. These include the core peacemaking process that aims at arriving at a peace agreement, the constitution making element of the process, or the implementation of different aspects of the peace agreement or the constitution.

---

**8** See the debate on power mediation: "Third parties using sanctions and incentives to influence the behavior of the protagonists should be alert to their limitations and consider how such instruments can be complemented by other approaches" (McCartney 2006, 13).

**9** "External actors may have a role as mediators in brokering peace or as third party enforcers, but long-term consolidation of a political settlement involves a local political process. Development partners can often contribute directly to financing the negotiation of a constitution and providing access to international experience and expertise (but will need to avoid attempting to drive the process or creating the perception that such support privileges some over others)" (OECD 2011, 47). It is telling that International IDEA (2011) entitled its policy paper: Constitution building after conflict: External support to a *sovereign* process (highlight mine). Practice differs, however: In many cases third party supporters are asked to develop constitutional options and to draft the text of constitutional provisions.

**10** See also Williams & Nystedt (2013), who argue for third-party support to constitution making based on an internationalization of constitutional law (international standards that have to be integrated) and rule of law arguments for the acceptability of third-party support for constitution making.

**11** The implementation of both peace agreements and constitutions, can encounter strong opposition to third-party support, normally by the more powerful party. This is often based on the argument that implementation should be a national process. While some peace agreements foresee the recourse to international third-party oversight (e.g. for ensuring security-related arrangements) or are criticized for not doing so (e.g. the Ahtisaari Agreement for Aceh) only very few constitutions establish international third-party support (e.g. in Bosnia and Herzegovina by including international judges in the highest court).

These "phases" do not necessarily occur one after another but may to some extent take place in parallel. For instance, the Constitution Drafting Assembly in Libya worked at the same time as separate peace negotiations, which created challenges for both processes. Even more evident is the non-linearity of different process elements when we consider other aspects, such as security sector reform. In Nepal, for example, there was a long debate on the sequencing within the peace process in respect to deciding on security aspects and constitutional options.

It is rare for one third-party institution or person to be involved throughout the process. Based on the current understanding, the role of third-party support tends to be different in these different phases or elements, and therefore support to different aspects of the process requires different roles, skills and expertise.

Practitioners' literature tends to reflect the "division of labour". For instance, many publications focus either specifically on peace mediation for a peace agreement, or on national dialogue processes or on constitution drafting[12]. Until recently, very few practitioner-oriented publications have looked at the peace process more broadly, at the overall requirements or the interrelationships between different sub-processes or phases[13].

---

**12**  See McCartney (2006); Papagianni (2017); Brandt et al. (2011).
**13**  See Bell & Zulueta-Fülscher (2016).

# Fused and highly interrelated sub-processes

While peace and constitution making are often regarded as distinct processes, reality draws a different picture. In conflict-affected contexts, peacemaking, constitution making and constitution building have become fused or closely linked sub-processes of an overall peace process. In practice, the processes are strongly interrelated.

In many cases, especially if conflict issues relate to national identity and the status of different groups, control over territory, or access to political power and/or resources, the transition from armed conflict to sustainable peace includes either constitutional amendments or a new constitution. Adopting a new constitution or amending an existing one is a way to institutionalize a political agreement. Parties to a conflict, in particular the potentially more vulnerable ones, are often keen to have a high legal entrenchment of an agreement. This can be provided by incorporating the agreement into the constitution.

If the peace agreement includes a power-sharing deal, a reflection in the constitution legitimizes the arrangement, and with it the exercise of power of those included in the deal. Not surprisingly, at least one of the conflict parties often demands the adoption of a new constitution or the amendment of the existing one (e.g. demands by ethnic groups in Myanmar). In these cases, peacemaking becomes constitution making.

In other cases, constitution making can be peacemaking. Many of the rudimentary agreements with smaller armed groups in Nepal have stipulated that demands of concerned groups would be taken up and addressed in the constitution making process. Through this, constitution making has been given the role of peacemaking. In the case of Nepal, constitution making might not have fulfilled this role to the complete satisfaction of the concerned groups.

A variety of peace processes combine peacemaking and constitution making. In some peace processes, agreements included whole constitutions (e.g. Bosnia and Herzegovina) or amendments of the constitution (e.g. the Republic of Macedonia, now Northern Macedonia). In these cases, peacemaking included constitution making.

Other peace agreements contain detailed provisions on power-sharing and further aspects that otherwise tend to be regulated in constitutions (e.g. the Comprehensive Peace Agreement in Sudan), include constitutional principles (e.g. South Africa) or Interim Constitutions (e.g. Burundi). Through these, conflict parties agreed on interim arrangements and established processes and guidelines for a subsequent constitution making process.

Other countries established separate and distinct processes. In Yemen, a National Dialogue was followed by an incomplete constitution making process. Although the sub-processes in Yemen were separate and quite distinct, there were at least strong expectations that subsequent processes would respect prior agreements so as not to unravel the achievements of other process elements. Lack of clarity on the interrelationship between sub-processes and insufficient linkage, e.g. of the negotiated peace agreement and a subsequent constitution making process, can easily restart contention[14].

Keeping processes separate is an illusion. The interconnectedness remains even in formally separate processes. At the very minimum, one process element directly impacts the others. Returning to the example of Nepal on the sequencing of the security sector reform process and constitution making, for a long time the constitution making process could not advance because one side insisted on first taking and implementing some security-related decisions.

Just one further example to illustrate the point: High risks are involved when the participatory constitution making process leads to agreements that run counter to the expectations and agreements of former conflict parties. These include the dangers that concerned conflict parties will (1) resort back to conflict, (2) use their influence (and potentially arms) to stop the constitution making process or at least (3) hamper the implementation process[15]. If constitution making processes and constitutions do not acknowledge and accommodate the existing formal or informal power, they fail.

There is a fusion or at least a strong inter-connectedness among the different elements or sub-processes because they take place in the same reality and tend to be part of an overall peace process aiming for sustainable peace. Therefore the question arises: What principles shall prevail? More precisely, how to balance different principles and conceive the role of third-party supporters?

≡ If peacemaking and constitution making are fused, can the third-party supporter take a pro-active role on process design related to constitutional provisions as well as the core peacemaking part of the process? Or does he or she have to give preference to the "sovereign process" by national stakeholders? In general, we see that third-party supporters to constitution making take a more pro-active role in conflict-affected contexts than in peaceful ones.

≡ If constitution making is part of peacemaking, will it be more acceptable than in non-conflict-affected settings to include ambiguous or utopian wording in the constitution in order to overcome disagreement, for instance the provision on official languages in the Republic of Macedonia (Northern Macedonia)?

---

14  See the inadequately linked peacemaking and constitution making processes in Libya as well as open questions in respect to the linkage between the peace process and constitution-drafting process in Myanmar. They pose huge risks for the future peace process.
15  See Töpperwien (2014).
16  "Getting parties to lay down arms may require compromises that result in negative effects such as compromised or inefficient governance systems that undermine the rule of law, or reinforce economic and social inequalities (e.g. Bosnia-Herzegovina, Liberia's national transitional government from 2003 to 2006)" (OECD 2011, 49).
17  For instance, Hart (2003, 1) argues: "A *democratic* constitution cannot be written *for* a nation, nor can one be written in haste".

≡ Is it acceptable to mediate agreements on ending violence and on constitutional provisions if the agreements limit future constitutional choices and might compromise longer term good governance[16]? Is there a difference in acceptability of compromises to good governance in conflict-affected contexts compared to those in peaceful ones?

≡ How much should the third-party supporter press for a quick agreement for the sake of short- to medium-term human security? Should he or she call for more time, capacity-building, reflection and discussion for the sake of constitution building[17]?

≡ How far should the third-party mediator push for inclusive participation of all segments of society when topics of constitutional relevance arise, including for power-sharing agreements that might find reflection in the constitution. How much can the supporter focus on the main conflict parties to ensure their buy-in, necessary for the signing of the agreement?

≡ To what extent should a third-party supporter of a constitution making process show restraint and endorse constitutional provisions as long as they conform to international standards? When should he or she urge parties to find options that address conflict items, as a peace mediator would try to do?

Will the answers differ if peacemaking and constitution making are part of one fused process or when they are designed as separate and distinct, interrelated processes[18]? Who decides how to balance the different principles and approaches?

Easy answers are not possible. When in doubt, it is likely that preference is given to the more pragmatic principles of peacemaking instead of the perhaps more rigid and idealistic principles of constitution making, for the legitimate sake of stopping the conflict. Many third-party supporters had to find pragmatic approaches in order to move both the peacemaking and the constitution making process forward by prioritizing or balancing the different principles[19].

For arriving at some guidance on how to combine, balance or redefine the different principles of peace and constitution making, it might be useful to take a step back and focus instead on the needs and prerequisites of the overall peace process.

---

**18** "The quality of the process used is crucial to the successful design of such constitutions, it is important that the choice of process is left to national constitution builders who are able to prevail in the local context. The involvement of external actors in these processes, pressure for which has increased in recent decades, needs to be more carefully considered." (International IDEA 2011, 7)

**19** Several times in processes I worked in there have been quite heated debates about the appropriate approach. For instance, there was quite some criticism in Nepal when decision-making was moving out of the constituent assembly into closed-door meetings because decision-making within the constituent assembly seemed blocked. Some supporters to constitution making criticized that this could undermine the legitimacy of the constitution making process. Also in respect to "acceptable" options, there have been rather frequent disagreements. Should supporters try to move debates away from options that parties seemed willing to endorse, that might in the longer run lead towards more autocratic rule?

# Overall principles for supporting the process from armed conflict to a functioning constitutional order

A general trend is emerging in which peace processes are looked at more broadly and attention is paid to the linkages between sub-processes. The restructuring and renaming of the UN Department of Political Affairs to the UN Department of Political and Peacebuilding Affairs is only one example . Guidance notes and guidelines are also increasingly considering the needs of the overall process or at least of some aspects of other sub-processes. For instance, the UN Guidelines on Effective Mediation include the principles of national ownership and inclusiveness that are traditionally applied to constitution making. The UNDP (2014) Guidance Note on Constitution-Making Support encourages third parties to seize opportunities for peacebuilding.

As guidance and policy documents as well as various case studies suggest, if one looks at peace processes holistically, for sustainable results, the process and its sub-processes should at least lead to:

≡ Sufficient elite consensus or buy-in of conflict parties and influential elites in general.

≡ Broad public (national) ownership of the process and its outcome, for instance through participatory and inclusive processes.

≡ Sufficient trust among elites, as well as between elites and the public.

≡ For addressing conflict items, the establishment of decision-making processes that parties and the public deem legitimate and can balance different interests and manage conflict in a peaceful manner.

≡ For the endorsement of third parties, the adherence to international norms and standards[21] with due consideration to the needs of the hour and step-wise, phased approaches.

≡ Flexibility to move from pragmatic short-term to more legitimate longer-term arrangements[22].

≡ Quick wins and longer-term approaches to build capacity and understanding.

In the following sections, these will be called 'principles of the overall peace process'.

---

20  See the first edition of Politically Speaking in 2019 explaining: "The reform brings closer together the UN's work in diplomacy and good offices, peacekeeping and peacebuilding to better help countries prevent and overcome conflict and sustain peace. Just as the world is not rigidly divided according to paradigms or bureaucratic approaches, our work should not be confined to silos, ignoring how different dynamics and forces are interconnected. We have long realized that development, peace and security, and human rights are interdependent. The reform – which encompasses the UN development system and the organization's management structures – aims to turn that realization into a guiding operating principle. In the weeks ahead, we hope to bring you examples of just how the reform is making itself felt in our work."

21  "Impartiality is important to aim for but does not exclude the possibility of taking clearly defined positions on values and principles and on an appropriate process for dealing with the conflict." (McCartney 2006, 8).

22  "Although formal democratic institutions may be the long-term goal, development partners should be open to ways of making progress in the short to medium term through less orthodox approaches that build on informal relationships or on pre-existing, informal (non-state) institutions that command some legitimacy and reflect societal values and norms." (OECD 2011, 50). This flexibility also impacts on the understanding of constitutions: "We used to think of a constitution as a contract, negotiated by appropriate representatives, concluded, signed, and observed. The constitution of new constitutionalism is, in contrast, a conversation, conducted by all concerned, open to new entrants and issues, seeking a workable formula that will be sustainable rather than assuredly stable." (Hart 2003, 3). Similarly, International IDEA (2011, 7) points out that constitutions have become a crisis management tool.

# A comprehensive theory of change from armed conflict to sustainable peace

Peace and constitution making in conflict-affected contexts must be understood as part and parcel of one overall peace process that aims at achieving sustainable peace. This realization leads directly to the conclusion that any effective third-party support requires an overall theory of change that considers the overall process as well as the potential sub-processes or process elements.

A theory of change describes how and why change is expected to happen in a specific context. It includes the conditions, the multitude of necessary steps, and diverse impacting factors, that lead to the envisaged change. In particular, third-party supporters are called upon to argue how their initiatives and support will contribute to the desired change, in this case the change from armed conflict to sustainable peace.

The above principles of the overall peace process form the basis of such a comprehensive theory of change. They are the conditions that need to be fulfilled. In the end, third-party support must be conducive to achieving the above principles of the overall peace process. This affects context assessments, process design, and individual interventions as well as cooperation and coordination.

**Context assessment:** Context assessments must include a focus on the entire conflict context. The frame must be broad enough to register and analyse the various context factors, actors, structures and processes and their dynamics that can affect the transition from armed conflict to sustainable peace. This can only be achieved through a context assessment process that incorporates the various perspectives. It might be easiest to do such a context assessment by including third-party supporters (and others) who focus on different aspects of the conflict and the transition[23].

**Joint understanding of process design and the role of different sub-processes:** The realization that the overall peace process must adhere to certain principles will impact the design of the overall process and the different sub-processes or process elements so that they can become the steps leading towards the desired change.

As mentioned above, there have been attempts to mainly work through one sub-process (e.g. the peace negotiations) and to include decisions on constitutional choices in the peace negotiations. With this approach, the attempt to contribute to the overall principles could mean working at different negotiation tables to enlarge the number of involved stakeholders, at least in respect to certain topics such as power-sharing, amnesties and dealing with the past.

---

23  While joined context assessments by different institutions are often suggested and sometimes conducted, at least based on personal experience, more often than not they are relatively narrow in scope. For instance in Nepal, for a long time during the process there have been hardly any context assessments that considered the dynamics in the security sector reforms *and* in constitution making, which contributed to a number of inaccurate predictions of likely process developments.

It will usually prove difficult to fulfil the different principles within just one sub-process. For instance, the integration of constitutional provisions into an elite-driven peace agreement might be conducive (or essential) for establishing trust among key elites. However, this may come at the cost of the principle of broad ownership. On the other hand, the necessary elite buy-in may be difficult or impossible to achieve through a stand-alone constitution making process.

Depending on the context, establishing a more or less comprehensive overall process design linking different sub-processes, making use of specificities of sub-processes, and assigning different functions or roles to these processes might be more promising. For instance, peace mediation could focus on achieving sufficient elite consensus, national dialogue to build trust and broad popular ownership, and constitution making to confirm the emerging social contract and provide formal legitimacy to the rules of the game including to decision-making processes that balance different interests.

This will affect the design of different sub-processes. For instance, one could argue that constitution making after an extensive national dialogue process that already achieved national ownership of key decisions can be less participatory than if there is no national dialogue process. In Yemen, experts and certain politicians assumed that the national dialogue process created the needed buy-in and ownership as well as concrete enough direction, and the constitution drafting could be taken over by a group of technical experts who would constitutionalize the already existing agreement. Later stages of the peace process however showed that at least one important stakeholder questioned the inclusiveness and representativeness of the national dialogue process.

In addition, outcomes were not such that legal experts could just turn them into a constitutional language. They had to consider contradictions, ambiguities and gaps. An extensive national dialogue process can also create expectations of different stakeholders that future steps in the process are also done in a participatory way, which some argue is what happened in Yemen.

Designing one sub-process without regard to the overall process requirements or without full clarity of the functions of the sub-process will lead to challenges and tensions. For instance, the overall peace process might be jeopardized if a constitution making process unravels the results of a broadly accepted national dialogue process.

Furthermore, and even more importantly, even if functions are clearly assigned, tensions can emerge if the needs of the overall process are not considered. This can happen if the participatory constitution making process focuses on broad public ownership and loses sight of the need for maintaining elite-buy in. It is also possible if the peace negotiations lose sight of the need for broad ownership and legitimacy of longer-term agreements on future decision-making processes, potentially triggering new conflict.

≡ **Individual interventions:** Understanding the overall peace process and the place and role of the supported sub-process in the overall theory of change facilitates tailoring interventions that contribute to the overall process, although interventions might exclusively focus on a specific aspect or sub-process. The outcome of individual interventions should be defined and measured with regard to the role and objectives the supported sub-process has to fulfil within the overall peace process. The principles of the overall process can help to define goals and related indicators as well as sharpen the do-no-harm perspective. For instance, when contributing to constitution making with a peace process perspective, a third-party supporter might decide to support informed, inclusive and participatory constitution making as a positive contribution towards sustainable peace. At the same time, he or she could closely monitor the impact on elite buy-in or the trust among elites in order to avoid doing harm to the overall process.

≡ **Cooperation and coordination:** The perspective on the overall peace process based on an overall theory of change necessitates cooperation and coordination not only in respect to the sub-process but also between sub-processes.

# Conclusions

Transitions from armed conflict towards a functioning constitutional order are always specific. No two transitions are alike. Context matters. Peace processes ranging from overcoming armed conflict to the realization of an effective constitutional order are never linear, and any intervention by third parties must be adapted to the specific context. Also, process design must provide for adaptability. This excludes standardized interventions and one-size-fits-all approaches to process design, as well as working with pre-established grand designs.

Responsible third-party support will aim at achieving an overall understanding of the peace process. This involves cooperation and coordination with other supporters. It includes designing intervention strategies based on a comprehensive theory of change, considering the different sub-processes, their potential objectives and functions, the different issues to address, as well as the overall principles for a successful peace process. Supporters will regularly reassess and monitor the dynamics of the process and will be prepared to maintain flexibility and adapt to the needs of the sub-process and the overall process. The principles that shall guide the overall process can help to evaluate the direct and indirect impact of their own contribution as the basis of any positive contribution and do-no-harm approach.

In the end, it will need a sufficient elite consensus or buy-in of conflict parties and influential elites in general as well as broad public (national) ownership of the process and its outcome. The peace process will have to establish sufficient trust among elites, as well as between elites and the public. It will have to change the response to conflict by establishing decision-making processes that parties and the public deem legitimate, which can balance different interests and manage conflict in a peaceful manner.

Many things can help, including looking for quick wins and longer-term approaches, ensuring flexibility to move from pragmatic short-term to more legitimate longer-term arrangements, working towards adherence to international norms and standards with due consideration for the needs of the hour and step-wise approaches.

The achievement of the different principles will not happen at once or all at the same time. One can precede the others, and there might be backslides or unexpected big leaps forward. However, they can provide guidance on what to consider, what to support, how to adapt, and in which direction the processes should be steered in order to arrive at sustainable peace.

# References

**Bell, Christine & Kimana Zulueta-Fülscher** 2016. Sequencing Peace Agreements and Constitutions in the Political Settlement Process, Policy Paper No. 13, November 2016. Stockholm: International IDEA. www.idea.int/ publications/catalogue/sequencing-peace-agreements-and-constitutions-political-settlement-process.

**Berghof Foundation** 2012. Glossary on Conflict Transformation. www.berghof-foundation.org/fileadmin/redaktion/ Publications/Books/Book_Glossary_Chapters_en/ glossary_2012_complete.pdf.

**Brandt, Michele, Jill Cottrell, Yash Ghai & Anthony Regan** 2011. Constitution-making and Reform: Options for the Process. Geneva: Interpeace.

**Hart, Vivien** 2003. Democratic Constitution Making, in: United States Institute of Peace Special Report 107, July 2003. Washington, D.C.: USIP.

**Hayner, Priscilla** 2011. Dilemmas and Difficulties in Peace and Justice: Considerations for Policymakers and Mediators. Brussels: MediatEUr.

**McCartney, Clem** 2006. Dilemmas of Third-Party Involvement in Peace Processes: Reflections for Practice and Policy from Colombia and the Philippines. London: Conciliation Resources.

**Papagianni, Katia** 2017. Oslo Forum Background Paper: The Promise and Perils of National Dialogues. Geneva: The Centre for Humanitarian Dialogue.

**International IDEA** 2011. Constitution Building after Conflict: External Support to a Sovereign Process, Policy Paper, March 2011. Stockholm: International IDEA. www.idea.int/ sites/default/files/publications/constitution-building-after-conflict.pdf.

**OECD** 2011. Supporting Statebuilding in Situations of Conflict and Fragility: Policy Guidance. DAC Guidelines and Reference Series. Paris: OECD Publishing.

**Töpperwien, Nicole** 2014. Participation and representativeness in constitution-making processes, in: Bisarya, Sumit (ed). Constitution Building: A Global Review (2013), 4-10. www. idea.int/publications/catalogue/constitution-building-global-review-2013.

**UNDP** 2014. UNDP Guidance Note on Constitution-Making Support. New York, NY: UNDP. www.undp.org/content/ undp/en/home/librarypage/democratic-governance/ parliamentary_development/GuidanceNote_ ConstitutionMakingSupport.html.

**Williams, Rhodi C. & Maria Nystedt** (ed.) 2013. Constitutional Assistance and the Rule of Law in Post-Conflict Transitions: An Overview of Key Trends and Actors. Stockholm: Folke Bernadotte Academy.