



Katarina Månsson

Human rights in mediation

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The heart of the matter



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Katarina
Månsson

About the author

Katarina Månsson currently works as Special Assistant to the Assistant Secretary-General for Human Rights in the Office of the United Nations High Commissioner for Human Rights (OHCHR) in New York. At the United Nations, she previously served in the Office of the United Nations Special Coordinator for the Middle East Peace Process (UNSCO), the Political Unit of the Executive Office of the Secretary-General, and with OHCHR in Uganda and Geneva. Ms. Månsson holds a Ph.D. in international human rights law from the National University of Ireland, Galway, a European Master's Degree in Human Rights and Democratisation, Venice, Italy, and a Master's in Political Science from Lund University, Sweden.

From November 2021 through February 2022, within the United Nations Sabbatical Leave Programme, she conducted research at the Berghof Foundation, on human rights and mediation entitled “The Heart of the Matter: The Role of Human Rights in Mediation” which serves as the basis of this book.

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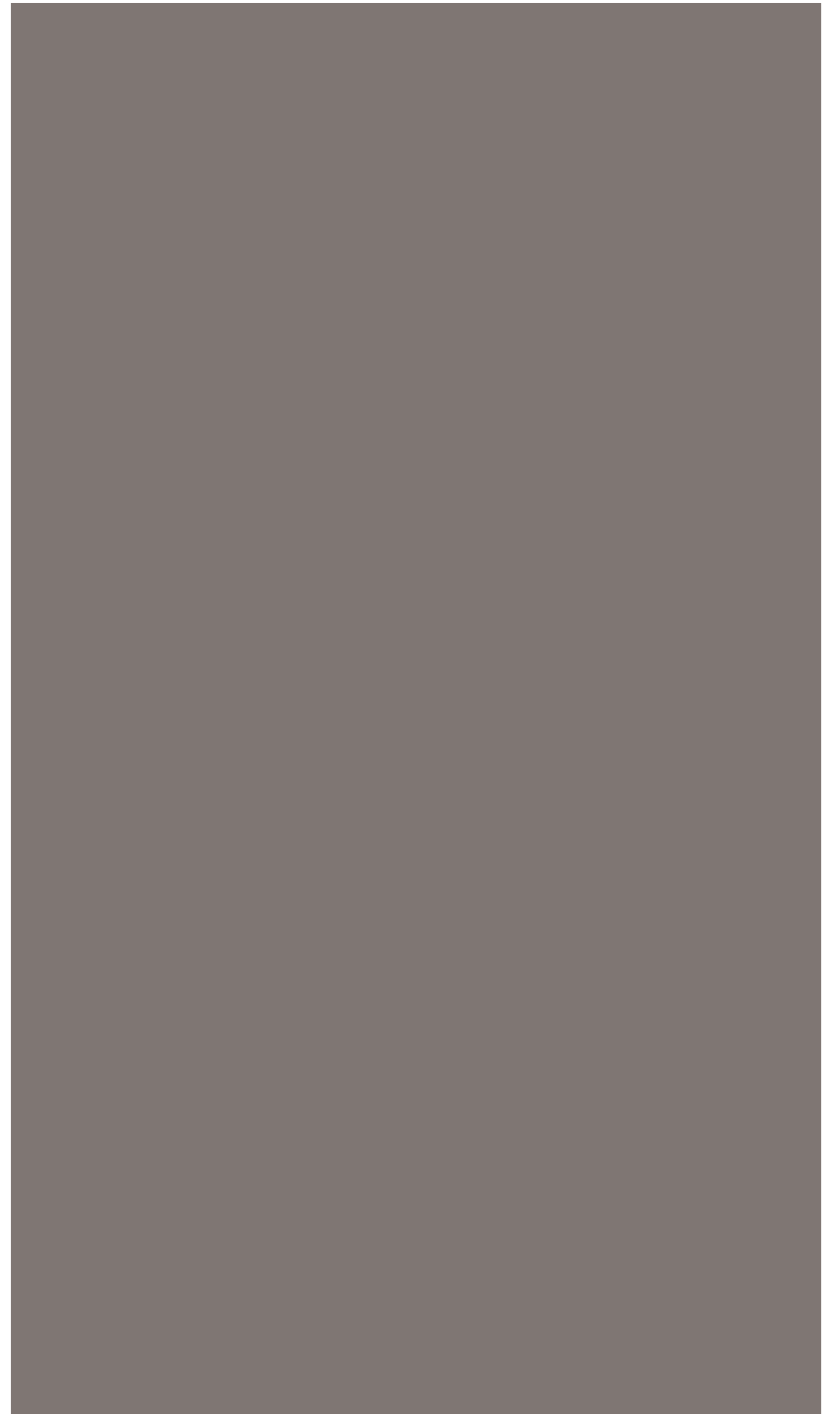
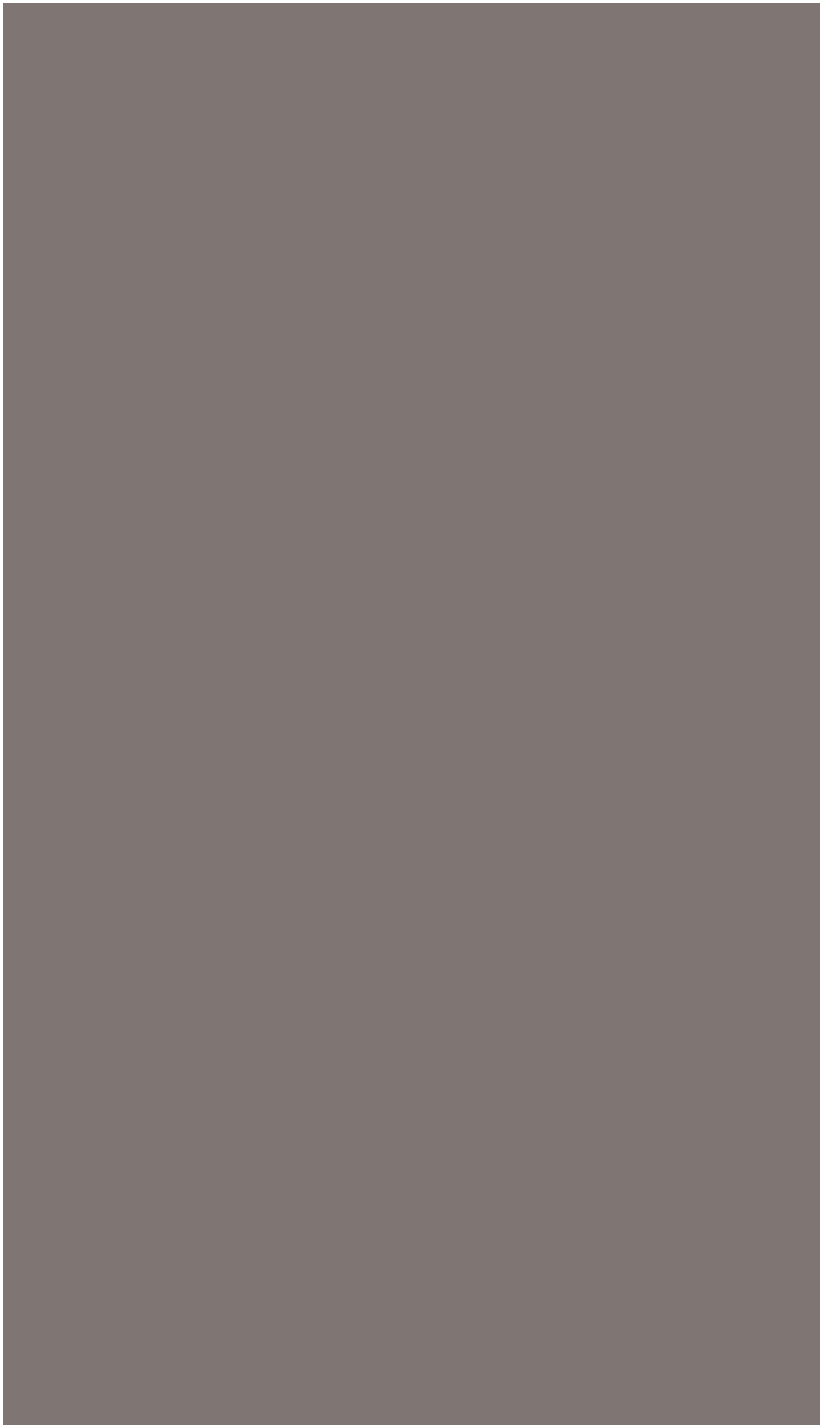
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Foreword

Andrew
Gilmour

Andrew Gilmour is Executive Director of the Berghof Foundation and was formerly United Nations Assistant Secretary-General for Human Rights.

Like two armed formations who are ostensibly in alliance against a common enemy, but in reality suspicious of one another, so stand the rival camps of Human Rights and Mediation.

Despite fully agreeing about the need to bring an end both to war and to human rights violations (with the latter both cause and effect of the former), they nevertheless have a tendency to question each other's ethics, goals and methods.

Mediators have at times seen human rights activists as sanctimonious and politically obtuse in their insistence on “naming and shaming” transgressors, rather than doing everything possible to end the fighting. Conversely, some human rights activists view practitioners of mediation as devoid of principle, focusing on cynical deals with brutal war-lords that ignore the root causes of the conflict.

One side bristles at the other's arrogance that derives from its self-proclaimed moral superiority; the other at the arrogance that comes from being treated as a diplomatic heavy-weight.

Having worked for some decades on both sides of this divide, I find

this caricature heavily exaggerated and of course largely unfair. But it is not entirely so, since — as in most caricatures — it contains a grain of truth. More troubling is that the caricatures can lead the two sides to unwittingly undermine their common agenda.

This is why I was delighted when Katarina Mansson suggested coming to the Berghof Foundation for her sabbatical leave from the Office of the United Nations High Commissioner for Human Rights in order to delve into this relatively unexplored topic. Having worked closely with Katarina, both when I was Director for Political and Human Rights issues in the Office of the United Nations Secretary-General (where much of the work was on political negotiations relating to conflict) and later when I was UN Assistant Secretary-General for Human Rights, I knew she would take this subject in a direction that had never been tried before.

But the product of her deep research through personal interviews and archival and desk study has surpassed even the high expectations that I had. This really is an important publication. It takes aim at the myth that human rights are somehow a complicating or annoying factor that gets

in the way of “real” mediation work and conflict resolution. And shows, through perfectly chosen examples, how the timely deployment of human rights tools has actively facilitated mediation processes and made them more sustainable.

Mansson stresses how the “fear of criminal accountability among one or more of the parties” is often seen as an impediment for properly grappling with human rights when mediating between warring parties who may well have committed appalling war crimes. This is indeed an important point, but as she also shows, human rights is about so much more than simply calling out and prosecuting violators. In this regard, she emphasizes the importance of a holistic understanding of human rights among all actors engaged in mediation.

Despite the views of some, it is not true that every problem in conflict looks like a nail to a wild, hammer-wielding human rights actor. The problems are as broad as the rights agenda in general, and there are a wide variety of other tools in the human rights tool-box (from the all-use to the specialist ones). For mediators, it would be very helpful if they got to know what those tools and approaches are and how

they can be used. And for human rights actors, there is a need to balance speaking out for justice on the one hand and being politically relevant on the other.

A particular interesting episode covered in this book are the efforts of the first UN Mediator to work on the Palestine-Israel situation. Count Folke Bernadotte took the view — vindicated by the experience of the next three quarters of a century — that it is “undeniable that no settlement can be just and complete...(plus) it would be an offence against the principles of elemental justice if these innocent victims of the conflict (i.e. the Palestinian refugees) were denied the right to return to their homes”. This was not the only key element of human rights for all Arabs and Jews that was espoused by Bernadotte during the sadly short period he was able to operate before being assassinated by a terrorist group which included the future Prime Minister of one of the parties.

Mansson also shows the contrast between Bernadotte’s efforts in 1948 and the Oslo Accords 45 years later, which were virtually devoid of human rights considerations. Many observers of the situation in the Occupied Territories would agree that this was a cardinal

shortcoming — that the deal was made on the Palestinian side with some figures from the exiled (but soon to be hugely enriched) Tunis elite who had very limited interest in the human rights of the population they were supposed to represent, a reality that was taken much advantage of by the Israeli leadership in subsequent years.

Mansson’s analysis of the successful United Nations mediation on Bahrain in 1970 shows two things: how even in the absence of an explicit human rights mandate, the creativity of the mediator, combined with the principled stance of a brave and activist Secretary-General, can directly contribute to the outcome of a mediation process that enables the enjoyment of human rights.

In 1984, as part of efforts to mediate the Iran-Iraq war, an agreement was reached called the 12 June 1984 moratorium. The agreement, described by Jan Eliasson as a “humanitarian step which had human rights aspects”, was seen as a way of reducing violence, adhering to international norms of warfare regarding the targeting of civilians, and creating some confidence between the parties. It led to the saving of many lives as well as to the release of sick and wounded prisoners of war.

One of the highlights of this short book is the account of the El Salvador peace process in the early 1990s where, for once, human rights were a fundamental objective of the negotiation process — which also happened to be the first time that the UN attempted to broker the end of an internal conflict. The San José Agreement of July 1990 outlined a series of minimum standards for the protection of human rights, including an end to enforced disappearances, unlawful arrests, incommunicado detention and torture, and envisioned the creation of a UN human rights verification mission. As Álvaro de Soto, who headed the UN team, has said, the agreement helped break the impasse regarding the difficult topic of the status of the armed forces. This not only facilitated the peaceful political transformation of the country, but also helped shape the burgeoning concept of “post-conflict peace-building” in which human rights protection was seen as an important contribution.

The case of Guinea (and others outlined in this book) in 2008 illustrates that the UN’s position with the parties as mediator was actually strengthened by the use of such human rights and justice tools as an international

commission of inquiry, the ICC and bilateral sanctions against major violators of human rights. This was because it provided some additional leverage while also reassuring the opposition parties that their concerns would not be ignored. As the UN Special Representative for West Africa, Said Djinnit, said to the author of this book, “It was clear to me that human rights were at the beginning and the end of any political conflict; an essential component to address and to prevent conflict”.

The Colombia Peace Process stands out as being one permeated in human rights considerations that were crucial to its success. The rights agenda in this instance was aimed not just at putting the victims of past violations at the center of negotiations (to the benefit both of the legitimacy of the mediation and of human rights), but it was also forward-looking in addressing economic, social and cultural rights so as to ensure greater equality in conflict areas.

Mansson argues convincingly in her conclusion that human rights are at the heart of the mediation, not least because as “the only universally agreed standards of human dignity and well-being,

human rights lend a unique credibility to the mediator as an impartial actor while providing the direction of the future”.

This applies to the UN in particular. And during a period when multilateralism, human rights and mediation are all seriously challenged, putting human rights properly into its mediation activities (and sometimes in specific terms, not just in vague proclamations that do little to discourage violators) would help restore the universal organization to its rightful place in this field.

But it applies to other organizations as well. Jonathan Powell is quoted here as saying, with justification, “As a mediator, it is not for me to set the agenda and insist on human rights. But an agreement that doesn’t address human rights is not a successful one.” Nevertheless, Mansson does not hide her surprise that in most non-official mediation organizations (including the one I am responsible for), an explicit human rights perspective “is largely missing”. This needs to change.

She comes up with seven core answers to the question of how

to better integrate human rights in mediation. She also points out how the practitioners of both fields need to both better explain to and learn from the other. If those engaged in mediation can learn more about the benefits for peace processes by taking a wider perspective of human rights than they have been used to, this would certainly help them. Similarly, human rights practitioners would help their case if their fully justified findings were sometimes presented either in less moralistic or in less legalistic terms.

Or as Mansson puts it more elegantly, “As much as experts in mediation would benefit from adequate exposure to and understanding of human rights, human rights professionals similarly would benefit from greater skills and expertise in mediation, peace-making and quiet diplomacy.”

The author argues that it is not just a mutual responsibility for each of them to reach out to the other, but also a mutual opportunity. Having in the past tried to approach mediation work from a human rights angle (to make it more principled), and human rights work from a more political angle (to make it more likely to be accepted), I find this concise but

deep study by Katarina Mansson to be a major contribution.

In addition to this book and the follow-up, there is a welcome new UN initiative underway with a joint DPPA-OHCHR project having been on this very topic. In the non-official arena, the Berghof Foundation, working with some of our partners, is seeking to go in a similar direction. The subject of this book is after all one of a number of areas where collaboration between the inter-governmental and the non-official spheres can be very productive. Katarina Mansson’s UN sabbatical residence at the Berghof Foundation and its excellent product has illustrated this with the greatest clarity.

*Andrew Gilmour
Berlin, April 2023*

Abstract

Despite the centrality of human rights and mediation for the peaceful settlement of disputes, the role played by human rights in mediation has remained a largely unexplored topic within and beyond the United Nations. One reason is a long-standing perception among mediators of human rights as an obstacle to efforts of finding political solutions and compromise between parties to conflict, often linked to a narrow understanding of human rights concerned primarily with legal accountability. This study seeks to challenge this perception by identifying past and present practice of how human rights have in fact facilitated mediation processes. In so doing, it aims to bring human rights and mediation practitioners closer together and to strengthen human rights considerations in mediation. In this regard, the research, conducted under the United Nations Sabbatical Leave Programme from November 2021 through February 2022, is a contribution to an ongoing joint project of the United Nations Political and Peacebuilding Affairs (DPPA) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the role of human rights in mediation.

Eight mediation processes by the United Nations and

other organizations and actors are examined. This assessment is preceded by an analysis of discussions on the interrelationship between human rights and peaceful settlement of disputes during the negotiations of the United Nations Charter and a conceptual framework on the nexus between human rights and mediation. The research is informed by close to sixty interviews with current and former senior and other United Nations officials and representatives of non-official intermediaries and other experts engaged in mediation.

The research finds ample evidence of how human rights analysis, actors and approaches have positively contributed to — and at times directly facilitated — mediation: Notably, in El Salvador (1990–1992), Aceh (2005), Guinea (2008–2010) and Colombia (2012–2016) as well as through the work of regional mechanisms such as the High Commissioner on National Minorities of the Organization for Security and Co-operation in Europe (OSCE). This includes the ability of human rights frameworks and agreements to break impasses in political negotiations, build confidence between and lend domestic and international legitimacy to the parties, put pressure upon parties

to conflict to change behaviour, commit to a common political vision and to stave off political tensions. Colombia emerges as an exemplary recent case of how an in-country United Nations human rights presence can support a mediation process from beginning to end, including by serving as a critical impartial actor to inform and advise the mediation and by facilitating victims' participation therein.

The study argues that human rights and mediation — as among its foremost tools to settle conflicts peacefully — stand at the heart of why the Organization was established. However, while human rights aspects often permeate the entire mediation process, it remains a very difficult aspect that tends to remain on the margins — “a footnote”, to paraphrase one interviewee. The risk that human rights are sidelined is further accentuated as mediation is increasingly becoming a fragmented arena and one where parties may move away from United Nations-led mediation with its perceived normative load. In this regard, non-official intermediaries engaged in mediation were found to attach little attention to human rights, partly due to a lack of expertise and limited engagement with human rights actors. To encourage

greater integration of human rights in mediation, seven elements of how to do so are outlined — including by advancing a holistic approach to human rights, appealing to parties' self-interest, incentivizing with humility and sequencing with pragmatism.

Overall, interviewees expressed a keen interest in the topic and in deepening dialogue and engagement on the role of human rights in mediation. Given the current geopolitical environment, this assumes additional importance. The report thus concludes with a call for renewed action on this topic within and beyond the United Nations — a “return to the fundamentals”. To this end, the report recommends a number of measures aimed at greater institutionalization of human rights in United Nations-led and other mediation processes.

Acknowledgement

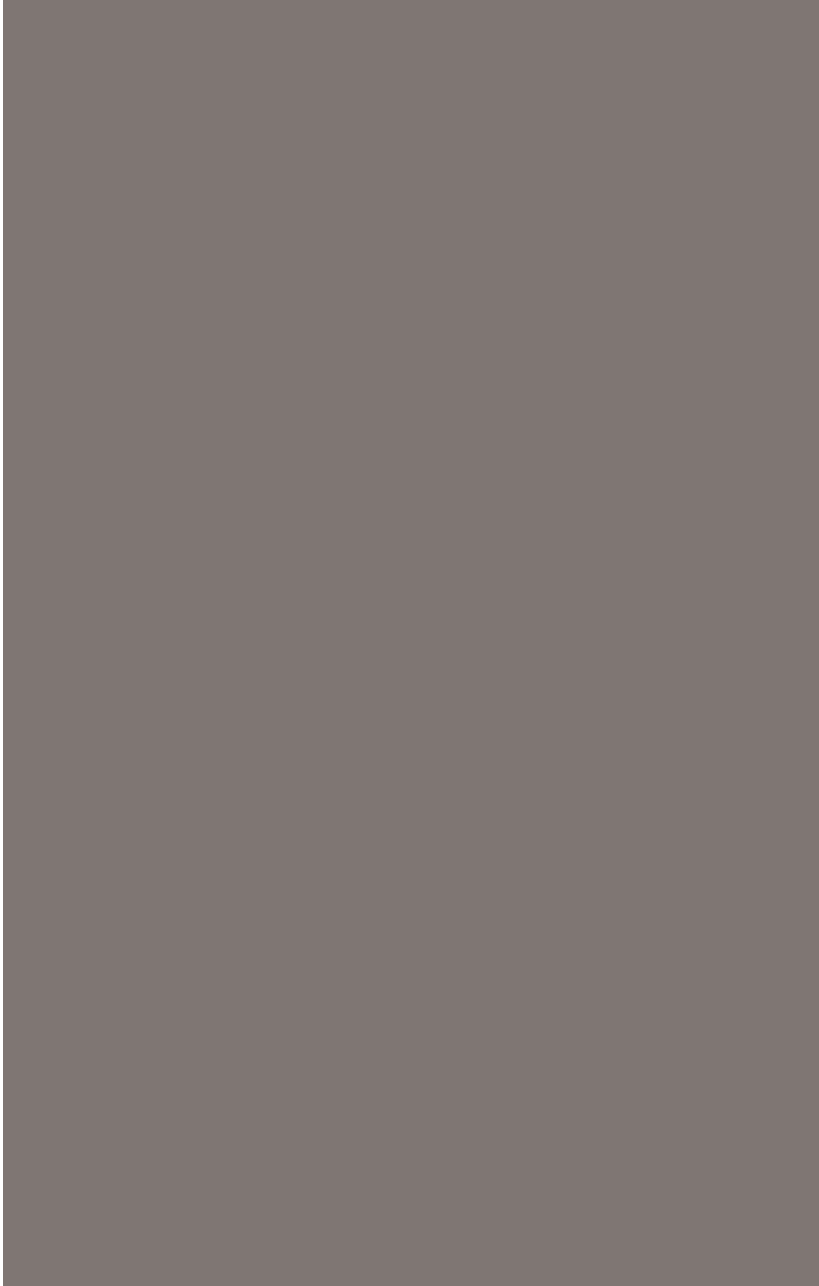
This research would not have been possible without the unwavering support and encouragement of Ilze Brands Kehris, Assistant Secretary-General for Human Rights and Head of the New York Office of the OHCHR, and Andrew Gilmour, Executive Director of the Berghof Foundation, Berlin. I am deeply grateful to both: To Ilze Brands Kehris for supporting the research proposal from start to finish and for the invaluable advice throughout the process; to Andrew Gilmour for hosting me at the Berghof Foundation and for the excellent support throughout the duration of my stay in Berlin. Thanks to his guidance and direction, the Berghof Foundation provided the ideal institutional home for my sabbatical research. I wish to express sincere thanks to all staff members who shared their insights and experiences with me, with special thanks to Beatrix Austin, Dalia Barsoum, Véronique Dudouet, Carolin Poeschke, Luxshi Vimalarajah, Oliver Wils and Oliver Wolleh.

I am also grateful to the United Nations Sabbatical Leave Programme of the Department of Management Strategy, Policy and Compliance for the opportunity to conduct this sabbatical research. In line with the vision and purpose of the United Nations Sabbatical Leave Programme, this research

is a contribution to an ongoing joint DPPA-OHCHR project on the role of human rights in mediation. In this regard, I wish to convey warmest thanks to Juan Jeannet Arce, Asif Khan, Murielle Tchouwo and James Turpin for their support and inspiring conversations and exchanges during the research.

Many thanks also go to Susan Kurtas and Mereani Vakasisikakala at the Dag Hammarskjöld Library in New York and to Aleksandr Gelfand and Stephen Haufek at the United Nations Archives at United Nations Headquarters for their superb assistance in providing access to critical documents required for the study.

My unreserved gratitude goes to all individuals interviewed for this research and for their generous time and engagement. Their expertise and experiences, reflections and recommendations, form an essential part of the present report. I am particularly indebted to Jan Eliasson and Iqbal Riza for their tireless support and feedback, and for infusing this research with their passion for the power of the word, dialogue and the Purposes and Principles of the Charter.



1

Introduction

This research coincided with the most dramatic political event in Europe since the fall of the Berlin Wall in 1989: the armed invasion of Ukraine by the Russian Federation on 24 February 2022. Since my arrival in November 2021 at the Berghof Foundation – the first German foundation dedicated exclusively to peace education and research at its establishment in 1971 – the military build-up and political tensions at the borders of Ukraine grew in intensity. With the invasion of Ukraine, all that Berlin symbolizes – notably the unification of East and West – suddenly seemed lost. The idea of the European peace project – and the values that underpinned it – was no longer a given.

In April 2022, the United Nations Secretary-General António Guterres called the war in Ukraine “one of the greatest challenges ever to the international order and the global peace architecture founded on the United Nations Charter”.¹ At the outbreak of the war, Guterres urged all parties to make full use of Article 33 of the Charter, which behooves parties to any dispute to, first of all, seek a solution “by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice”.² As with all provisions of the Charter, article 33 (1) is to be read in conjunction with Article 1 (1) of the Charter which outlines the first purpose of the Organization – the maintenance of international peace and security – including “to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace”.³

The present study concerns how to enhance efforts to implement this core purpose of the United Nations. More specifically, it analyzes how human rights [“the principles of justice and international law”] can support mediators in their task to assist parties to conflict settle their disputes peacefully. Despite the centrality of human rights and conflict prevention and resolution in the work of the United Nations, the role of human rights in mediation⁴ has remained an under-explored area, both within and outside

the Organization. Only recently has this important nexus become the subject of a dedicated joint project between the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Mediation Support Unit (MSU) of the United Nations Department of Political and Peacebuilding Affairs (DPPA).⁵ As research conducted under the United Nations Sabbatical Leave Programme, this study seeks to contribute to this project and to advance a burgeoning interest and dialogue on this topic within the international mediation community.⁶

Background, purpose and scope

This research concerns how human rights principles and standards can contribute to the political work of the United Nations, and other entities, to prevent and resolve conflict. The integration of human rights in mediation may well represent the most challenging — and therefore also arguably the most interesting — aspect of the interplay between norms and politics.

While the United Nations has made significant progress in effectively integrating human rights in United Nations peace operations, institutionally and operationally, similar inroads remain less advanced in the area of good offices and mediation. Upon taking office, Secretary-General Guterres made prevention across the United Nations system a priority, and emphasized mediation as an important tool to this end.⁷ He stressed the Organization's responsibility to "identify and seize any possible window of opportunity for mediation in order to prevent or manage conflict", and noted his intention to bring together "the capabilities of the diverse actors in the Organization across the peace and

security, development and human rights pillars so as to maximize our assets in support of mediation”.⁸

This study explores how this objective of the Secretary-General can best be realized in practice by analyzing how human rights can support mediation and good offices efforts. Through a selection of eight case studies, the research seeks to highlight how human rights considerations and analysis have directly contributed to mediation efforts since the establishment of the United Nations. Several studies have looked at human rights in mediation and transitional justice processes post-conflict, but very few have analyzed the specific role of human rights in mediation aimed at resolving and preventing conflict.⁹ The study thus aims to address this lacuna and support implementation of the Secretary-General’s vision by identifying: (i) good practices of how human rights have helped mediators identify and advance political solutions; and (ii) approaches and institutional mechanisms and processes that can support mediators and human rights experts move this agenda forward together in greater synergy. Ultimately, the research aims at strengthening the bridge between human rights experts and mediation experts — often perceived to operate at opposite ends — by identifying concrete examples how human rights analysis and actors can prove helpful to mediators.

It also forms part and parcel of wider efforts underway under the Secretary-General’s Call to Action for Human Rights, aimed at strengthening leadership and ownership of human rights as a problem-solving tool across the Organization. Under the Call to Action, which builds and draws on the Human Rights up Front initiative, dedicated dialogues on human rights with Special Envoys and Special Representatives of the Secretary-General have begun. The overall premise of the research is that the effectiveness, relevance and credibility of the United Nations will benefit from mediation efforts that are informed and guided by human rights analysis and considerations.

Methodology and delimitations

This is a qualitative study with elements of comparative research methods as both United Nations and non-United Nations led mediation cases are analyzed to draw preliminary conclusions of general application and relevance to actors engaged in mediation. As existing literature on the topic proved limited, it relies on both primary and secondary resources.

A key finding concerns the need to “return to the fundamentals”.¹⁰ This conclusion is based on the numerous interviews conducted and on the analysis of the interlinkages between human rights, peaceful settlement of disputes and conflict resolution that emerged during the negotiations of the Charter according to its travaux préparatoires (Chapter 3). The study thereafter explores the role that human rights played in eight mediation processes: Four mediation cases led by the United Nations (Palestine, 1948; Bahrain, 1970; The Iran-Iraq War, 1980–88; and El Salvador, 1989–1992) and four mediation process led by other actors (the High Commissioner on National Minorities of OSCE and its role in Ukraine in the 1990s; the Aceh peace

process 2005 (Martti Ahtisaari); Guinea 2008–10 (ECOWAS); and Colombia 2012–2016 (the Colombian parties).

The cases are selected on the basis of several considerations. Primary among these are: (i) the temporal scope (from the appointment of the first United Nations mediator in 1948 (Palestine) to the conclusion of the Colombian peace process in 2016); (ii) a broad geographic scope (encompassing Africa, Central and Latin America, Asia-Pacific, Europe and the Middle East); and (iii) the diversity of mediation actors (the United Nations, regional organizations such as the OSCE and the Economic Community of West African States (ECOWAS), non-official intermediaries and individual Member States). Ongoing mediation efforts in situations such as Syria and Yemen are not included due primarily to delimitation constraints. This was offset by interviews with United Nations officials and representatives of non-official intermediaries who are, or have been, involved in these mediation processes.

Due to the absence of existing research, and with a view to make as practical and meaningful a contribution as possible, interviews represent an essential component of the research. In total, 57 semi-structured interviews were conducted with key interlocutors.¹¹ Interviewees include present and former senior and other United Nations officials with expertise in the topic and/or directly engaged in the selected case studies as well as representatives of non-official intermediaries,¹² academia, regional organizations or Member States. 21 of interviewees were women. Former and present UN staff members interviewed include Special and Personal Envoys as well as Special Representatives of the Secretary-General as well as DPPA, OHCHR and other United Nations officials.

A visit to Geneva was conducted in January 2022 for interviews with OHCHR staff and representatives of non-official intermediaries. Among the latter, executive directors of the Berghof Foundation, Conciliation Resources and Inter Mediate as well as working-level representatives of Berghof Foundation, the Centre for Humanitarian

Dialogue and Swisspeace were interviewed. Due to time constraints, interviews with the full set of all serving United Nations Special Envoys as well as with representatives of other regional organizations, such as the AU and ECOWAS, or individual Member States, were not feasible.

For the reasons outlined above, and in light of limitations imposed by a four-month sabbatical research, this study does not seek to present an exhaustive account of the topic. Rather, its primary objectives are two-fold: First, to bring heightened attention to the role of human rights in mediation among officials and actors engaged in mediation within and outside the United Nations. Second, to initiate and deepen dialogue and cooperation between mediation and human rights experts and practitioners.

2 Human rights in mediation

An
unexplored
nexus in
theory and
practice

Mediators constitute a yet unexplored actor in the norms literature. Their position is unique, as they do not wield coercive power given that they depend on the consent of the parties. Once the parties have accepted a mediation process, however, mediators usually have decision-making power when it comes to managing the mediation process. Thus, investigating their normative agency provides insights into how they navigate this power distribution, also in light of their own normative backgrounds and expectations of their mandating agency.¹³

This assessment by Hellmüller, Pring and Richmond sheds stark light on what they identify as a “glaring gap” in studying and theorizing norms such as human rights, gender equality and inclusivity in mediation and a corresponding “blatant lack” regarding norm diffusion through mediation, while recognizing the critical and untapped potential of mediators in this regard.¹⁴ This conclusion holds particularly true concerning the role of human rights in mediation, and, vice versa, the role of mediators in protecting and promoting human rights. While this research focuses on the former, it approaches the two as deeply interconnected, if not inseparable. To date, studies exploring this specific nexus have either addressed human rights under the broader umbrella terminology of “norms”¹⁵ or considered it under the broader analytical framework of human rights and conflict resolution and/or transformation.¹⁶

Beyond this study, William O’Neill’s article on “Human Rights and Mediation” from 2005 remains one of the few publications that explicitly addresses this interrelationship.¹⁷ This reflects a lack of systematic attention to the issue among human rights experts and mediators. In a rapidly changing world order where respect

for basic tenets of international law is under attack, interviewees concurred on the urgent need for a renewed examination of this nexus. Effective integration of human rights in mediation is particularly urgent given the current fragmentation of mediation actors. This is especially important for the United Nations, as underlined by Sara Hellmüller: “In a peace process, mediators are often seen as the face of the United Nations. If mediators do not comment on confirmed cases of gross violations of international human rights law or serious violations of international humanitarian law, there is a risk of undermining the United Nations human rights framework”.¹⁸

This section presents the study’s conceptual approach by extracting the essence of the rich body of analysis on the role of human rights in conflict resolution¹⁹ and related work on mediation. It aims to challenge a prevailing perception among scholars and practitioners according to which mediators seem to regard human rights primarily as an obstacle to their work and objectives. Conversely, it seeks to offer an alternative narrative and analytical basis by highlighting points of commonality and the specific and practical value of human rights in and for successful mediation.

Finding complementarity through a holistic understanding of human rights

A recurring explanation for the perceived dichotomy between human rights and mediation throughout interviews is the fear of individual criminal accountability among one or more of the parties, and a corresponding perception that human rights in the context of mediation are reduced to considerations of how to address issues related to legal accountability. Different understandings of “justice” are indeed among three key challenges identified by Babbitt in efforts to integrate the conflict resolution and human rights agendas. Traditionally, Babbitt holds, the latter argues for state-level and individual accountability for gross violations whereas the former holds that mediators often define justice as fairness of a settlement in the eyes of the parties to the dispute.²⁰

The question also hits a sensitive issue of identity for human rights actors, in particular in finding the balance between speaking out for justice, on the one hand, and being politically relevant, on the other. This research argues that the two are not mutually exclusive and that a holistic approach to human rights can help navigate these challenging waters. In this regard, the Assistant Secretary-

General for Human Rights, Ilze Brands Kehris, emphasizes the need for constructive engagement and mutual respect between the two sides in this regard. Brands Kehris underlines that the human rights community, which can at times be absolutist in approach, should seize mediation processes as an important opportunity which can help build alliances and facilitate progress towards sustainable peace.²¹

While questions of accountability arguably remain the most contentious dilemma for mediators in addressing human rights, it is today commonly agreed — among both practitioners and academics — that the “peace versus justice” divide has evolved into a question of achieving “peace with justice”.²² As Parlevliet stipulates, the differences between conflict resolution and human rights “may better be understood as challenges or dilemmas that need to be addressed on a case by case basis”.²³ It is today largely accepted that human rights protection and promotion is important for long-term stability and development. This study embraces Parlevliet’s emphasis on the need to nurture greater complementarity between the two areas of work. As noted by Parlevliet, “both are necessary but insufficient by themselves”.²⁴

A helpful framework to help advance this relationship, what I call a relationship of “necessary and strategic complementarity”, can be found in Parlevliet’s advocacy for a holistic understanding of human rights for conflict resolution. It is based on the premise that violations of human rights are both a symptom and cause of conflict. Conversely, to address both the structural root causes of conflict (long-term conflict resolution) and to end immediate effects of conflict (short-term conflict resolution), conflict resolution benefits from a human rights-based analysis and approach.

This resonated among several interviewees. In the words of Jeffrey Feltman, former Under-Secretary-General for Political Affairs, “You do mediation because you wish to stop human rights violations. To me, human rights are

the starting point [for mediation] — the issue is how you maintain human rights throughout the process”.²⁵ Along similar lines, and with the example of the most recent peace process South Sudan in mind, Hilde F. Johnson notes how human rights violations documented by the United Nations and others contributed to urging the parties to negotiate and come to an agreement. But how human rights may unblock political impasse during a mediation process is much more difficult to identify. Johnson continues: “It is very important and needs to be addressed during negotiations. But a delicate balance needs to be found. Pushing it too hard can be risky because it can scare the parties off. And they may not be as amenable to participate actively in, or see a conclusion of, the talks, because they will be worried about the consequences of what can be revealed.”²⁶

To this end, a multi-dimensional approach to human rights for conflict resolution proposed by Parlevliet that goes beyond a legal understanding of human rights to one that conceives of human rights as rules, structures and institutions, relationships and process is suggested.²⁷

First, human rights as rules embraces human rights as legal, enforceable rights as contained in international instruments based on the universality and indivisibility of rights. It recognizes rights as parameters for conflict resolution, while recognizing that there is great scope for variation in how specific rights are realized in a given context. Second, the human rights dimension of institutions and structures relates to the structural divisions of power and resources in society and the realization that for human rights to have practical meaning, conflict transformation must involve the development of legitimate, independent and capable institutions and the necessary laws to support their realization. Third, relationships concern the relevance of human rights in organizing and governing the interaction between the state and citizens as well as among individuals and groups in society — i.e. both vertical and horizontal relationships should be based on human rights principles and recognition of the dignity of every human being.

The notion of the social contract, a pillar of Our Common Agenda, is relevant here.²⁸ Lastly, the process dimension of human rights relates to how issues of access, protection and identity are addressed and highlights the need to give practical meaning to fundamental human rights principles and values such as dignity, participation, inclusion, protection of minority or marginalized communities, and accountability. These relate directly to the basic fundamentals of effective and impartial mediation, including as outlined in the 2012 United Nations Guidance for Effective Mediation.²⁹

The centrality of the political

Against this framing, the research approaches human rights from a socio-legal³⁰ rather than a legal-positivist perspective. In the context of mediation, this multi-layered understanding of human rights facilitates the application of human rights as a problem-solving framework that can help address political disagreements and resolve underlying structural conditions and grievances that may have given rise to conflict. Notably, a holistic human rights perspective acknowledges the “centrality of the political”³¹ in human rights implementation as well as in mediation and hence offers a common framework for both professions.

In this vein, Theresa Whitfield suggests that the way to approach the human rights in mediation nexus is to assess: “Where are human rights in this conflict and what is the relationship between politics and human rights, and how can we help to resolve the conflict and use the rights-based discussion to this end?”³² To paraphrase Parlevliet, a holistic human rights framework can facilitate mediation as follows:

For [the mediator], the perspective of human rights forces a greater emphasis on structural conditions, especially the role of the state, systems of governance and issues of power in generating, escalating and transforming violent conflict. [...] In sum, a human rights perspective on violent conflict emphasizes inequality, inequity, injustice and insecurity as structural conditions underpinning conflict to [the mediator].³³

Consequentially, a holistic human rights approach can meaningfully contribute to efforts aimed at reaching a comprehensive understanding of conflict. With deeply entrenched inequalities breeding many conflicts, this also brings to the forefront the need for greater attention to economic, social and cultural rights in mediation efforts. Several interviewees emphasized this. One OHCHR official noted that “economic, social and cultural rights are an under-rated element of mediation” and another underscored how they can help formulate important provisions on health or education in a mediation process.³⁴ Importantly, economic, social and cultural rights can offer helpful and practical entry points for mediators to help the parties find agreeable compromises as well as common causes. As formulated by a senior United Nations official: “Selling human rights in their totality – this is the only way to gain acceptability”.³⁵

A comprehensive approach inclusive of human rights analysis stands a better chance of identifying durable solutions. The 2012 UN Guidance for Effective Mediation stipulates that “consistency with international law and norms contributes to reinforcing the legitimacy and the durability of a peace agreement ... and helps marshal international support for implementation”.³⁶ Álvaro de Soto writes that a mediator, as early on as possible,

ideally develops a broad vision of the overall solution and a strategy to achieve it. “A key element in the solution of a conflict should be that it will withstand the test of time, i.e. that it will be durable. [...] Durability should be the result of a negotiated solution which addresses perceived as well as underlying issues and provides the channel for the resolution of future disputes”.³⁷

To reach a holistic approach and broad vision, joint analysis of the situation and collaborative partnerships are essential. Indeed, to achieve this in practice, Dudouet and Schmelzle point to the need for closer cooperation on the ground between “peace facilitators” and “rights advocates”.³⁸ This is particularly imperative since, as confirmed by interviews, human rights and conflict resolution efforts often remains rather separated institutionally – whether multilateral, bilateral or non-governmental.³⁹ Reaching out to the other is not only a mutual responsibility. It is, I argue, an act of mutual opportunity.

Acknowledging power dynamics and accepting compromise

This study suggests that a broad conceptualization of human rights can help advance human rights-facilitated and informed mediation. Specifically, I argue that it facilitates mediators': (i) understanding of human rights and how they contribute to conflict prevention and resolution; (ii) dialogue, engagement and strategic planning with human rights actors; (iii) use and application of human rights norms and principles to find political solutions and advance mediation objectives; and (iv) inclination to proactively propose inclusion of human rights provisions in peace agreements and mechanisms for their effective implementation.⁴⁰ Ultimately, the research posits that a human rights lens strengthens and improves mediators' analytical and operational capacity and tools.

Such framing helps deconstruct and reduce the complexity — perceived or real — of international human rights standards, norms and mechanisms in mediation processes. This surfaced as an oft referred to reason for why mediators may wish to keep human rights at a distance in their work. “What can be off-putting for people involved in mediation

and indeed other spheres is that there is a tendency among some human rights officials to talk about human rights in an overly complex, opaque, legalistic and moralistic way”, according to Andrew Gilmour, Director of the Berghof Foundation and former ASG for Human Rights.⁴¹ Gilmour also reflects on a prevailing perception among official and non-official mediation actors of human rights as solely about “naming and shaming”. “Hence the vital need for the human rights movement to explain better that human rights go well beyond that, and that the use of human rights can be a valuable tool to help mediation rather just than an unhelpful way to undermine it.”⁴²

A holistic approach also speaks to acknowledging that conflicts are power-driven. To help resolve them, therefore, there's a need to propose realistic solutions to those in power.⁴³ “Power is the heart of the issue”, says Todd Howland, former Representative of OHCHR Colombia Office, and who engaged closely with the parties to the Colombian peace process. Understanding power structures and sources in society helps understanding the origins and drivers of conflict, beyond state to non-state actors such as businesses and criminal actors. In this context, Fabrizio Hochschild underscores the need to understand the changing nature of conflict, many of which are pursued to “maintain an environment where illicit economies can thrive”.⁴⁴

Accentuating the power dynamics that underpin armed conflict points to the importance of human rights actors situating human rights in their given political context with a view to contribute more concretely and meaningfully to mediation processes. Interviewees consistently raised this aspect and argued that it is just as important for human rights experts to enhance understanding of political processes and constraints facing mediation — the need for pragmatism and compromise — as it is for mediators to embrace human rights concerns and principles. As Jonathan Cohen, Executive Director of Conciliation Resources, noted:

I've never seen human rights advocates who do not want peace or conflict resolution actors who are against human rights. What is needed is compromise. The context needs to be shaped by normative standards. But you need to look for the parameter of the acceptable compromise. There is not enough of joining of the dots.⁴⁵

Ultimately, in practice the two expert disciplines meet in the use and choice of language. But this may also be the area where human rights in mediation face one of its greatest challenges as it inevitably posits different understandings, worldviews (ideological or otherwise) and perceptions against each other, in addition to the inherent complexities of rendering universal norms acceptable at the local level. While one of the strongest arguments for human rights in mediation is that they offer an important objective and impartial narrative in the mediator's tool kit, there is also a "general backlash on human rights that instills reluctance", as one mediation expert highlighted.⁴⁶ While some interviewees thus advocated for the need to be "semantically creative", others stressed the importance of protecting "the basic rock" of agreed norms and of finding similar expressions in local customs, religions and traditions.

These various considerations bring to the fore a key question in exploring the role of human rights in mediation — the how. Navigating that sensitive space linguistically only further underscores the imperative of close partnerships between mediation and human rights experts, while respecting the need to preserve and protect each other's specific and unique mandate.

3 The origins

Human
rights for
peace and
prevention
in the Charter
of the United
Nations

Any study on the role of human rights in resolving conflict through mediation will benefit from a reflection on the Charter of the United Nations and the vision of its drafters. Discussions at the San Francisco Conference in 1945 among the four Sponsoring Governments (China, the United Kingdom, the United Socialist Soviet Republics and the United States of America) and participating States reveal a firm understanding that safeguarding human rights and upholding international law and justice were not only identified as key objectives of the new World Organization but considered necessary conditions for international peace and security. This statement by Edward R. Stettinius, Secretary of State and the Chairman of the US delegation, may well capture that overall spirit in San Francisco:

The provisions on human rights proposed by the four sponsoring governments for the Charter of the international Organization represent a long step toward the realization of social, economic, and political justice for the peoples of the world. [...]

These provisions are essential if we are to build peace on the basis of justice and freedom for all. The people of the world will not be satisfied simply to return to an order which offers them only worn-out answers to their hopes. They rightly demand the active defense and promotion of basic human rights and fundamental freedoms. It is a matter of elementary justice that this demand be answered affirmatively.

It is my conviction that the foundation which we are laying here for the economic and social collaboration of nations in the cause of fundamental human rights and freedoms may well prove to be the most important of all the

*things we do here for the peace and advancement of the peoples of the world.*⁴⁷

This nexus between world peace and human rights would be consolidated in the Preamble of the Charter — to prevent war (“save succeeding generations”) and to defend human rights (“reaffirm faith”) — and came to imbue the entire document. The drafters were determined that the failures of the League of Nations were to be avoided through more effective procedures of peaceful change, including by addressing situations before they reached a critical stage. Early discussions at the United States Department of State in 1942–43 proposed to make acceptance of a “common program of human rights” a condition for membership in the new Organization and to include a Declaration of Human Rights in the Charter.⁴⁸ Notably, it was proposed that the Charter’s preamble would read as follows:

*The United Nations,
Having dedicated themselves to the principle
of peaceful relations between States, and
Having subscribed to a common program
of human rights,
Hereby establish and agree to maintain the
instrumentalities by which peace and human
rights may be secured.*⁴⁹

This goes to show a general conviction in San Francisco, against the backdrop of the horrors of the Nazi regime, that situations arising from matters originally within domestic jurisdiction could well become disputes threatening international peace and security. The suggestion of

including a Declaration of Human Rights in the Charter was also informed by the failure of the League’s minority rights protection system. It was believed that the political difficulties in safeguarding the rights of minorities could be avoided by a general recognition of the basic rights of all.⁵⁰

These propositions had strong advocates in San Francisco, especially among smaller States, and would lead to important amendments to the Dumbarton Oaks Proposals of the sponsoring governments. Of particular relevance for this study are articles of Chapters I (Purposes), II (Principles), VI (Pacific Settlement of Disputes), XV (The Secretariat), in conjunction with the Preamble and key articles on human rights.⁵¹

First, several States argued, during discussions on Chapter VI, Pacific Settlement of Disputes, for an explicit obligation on Member States to settle their disputes so as not to endanger justice, in addition to peace and security.⁵² While the three major powers defeated the proposal in the subcommittee, sentiments on this point were sufficiently strong in that a large majority (27-11) decided to include a reference to justice when the Committee met in plenary. The provision would eventually be moved to become article 2(3) in Chapter II on Principles, with a clear inclusion of justice:⁵³

*All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, **and justice**, are not endangered (emphasis added).*

“Justice” is not qualified or specified, but the travaux préparatoires make it clear that the drafters intended a broad interpretation: lasting peace was possible only on the basis of both international and social justice. The fear

among smaller States that the Organization intended “to impose a peace of expediency rather than a peace founded on justice” led to proposals that “justice” also ought to be a stand-alone Purpose alongside that of international peace and security.⁵⁴ While this failed, the compromise text would become the language in italics in the following quote of Article 1(1) — and relates expressly to the peaceful settlement of disputes:

*To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, **and in conformity with the principles of justice and international law**, adjustment or settlement of international disputes or situations which might lead to a breach of the peace (emphasis added).*

Second, in regard to the powers of the Security Council under article 34 of Chapter VI to “investigate any dispute, or any situation which might lead to international friction or give rise to a dispute”, the four Sponsoring Governments had proposed a reservation which excluded from its scope of authority any question within the domestic jurisdiction of states. This reservation was moved to the opening where it became one of the Principles, Article 2(7), applicable to the entire Charter. Smaller States in San Francisco argued hard for the position that what constituted “domestic jurisdiction” had to be determined in accordance with international law. Greece, supported by several States, proposed that the International Court of Justice (ICJ) should make that determination. Belgium suggested an amendment that would qualify non-interference in internal affairs for

situations which “in the judgement of the Organization are according to international law exclusively (or solely) within the domestic jurisdiction of any State”.⁵⁵ Both proposals received a simple majority of votes.

The argument was well articulated by France. Specifically, France proposed that the domestic jurisdiction clause would apply “unless the clear violation of essential liberties and of human rights constitutes in itself a threat capable of compromising peace.”⁵⁶ This interrelationship surfaced again during negotiations on human rights provisions related to the Purposes of the United Nations. Panama argued that the Organization should “protect” rather than merely “promote” and “encourage respect” for human rights (as per Article 1(3)). While the proposal was defeated, as such responsibility was seen to be primarily the concern of each State and would place unsurmountable expectations on the United Nations, delegations nevertheless felt that:

if such rights and freedoms were grievously outraged so as to create conditions which threaten peace or obstruct the application of provisions of the Charter, then they cease to be the concern of each state.⁵⁷

There was hence a prevailing sentiment among the drafters in San Francisco that the domestic jurisdiction clause was to be qualified by the degree to which human rights were protected and realized. In other words, it could be interpreted as if a country’s domestic human rights situation was considered to fall within the scope of the Council’s powers under article 34.

Third, this relates to article 99 of the Charter which authorizes the Secretary-General to “bring to the attention of the Security Council any matter which in his opinion

may threaten the maintenance of international peace and security”. Interestingly, this provision was readily accepted at San Francisco as delegations endorsed, verbatim, the proposed Dumbarton Oaks text. However, two amendments, presented by Venezuela and Uruguay respectively, are noteworthy. Venezuela proposed that the Secretary-General should be empowered to bring any such matter to the attention not only of the Council but also to the General Assembly in order for the latter to be informed of certain situations which States may not otherwise bring to its attention. Uruguay, in turn, suggested that the Secretary-General be authorized to bring to the attention of the Security Council “any matter which in his opinion might violate the principles of the Charter”.⁵⁸ While rejected by vote, the numbers (Proposal by Venezuela, 18-11; Proposal by Uruguay, 16-13) suggest that both proposals enjoyed considerable political support.

Fourth, while the United States delegation never presented a Declaration of Human Rights in San Francisco as initially planned, Panama did. Panama presented a draft “Declaration of Essential Human Rights” according to which the first Purpose of the United Nations would be:

*To maintain international peace and security in conformity with the fundamental principles of international law and to maintain and observe the standards set forth in the ‘Declaration of the Rights and Duties of Nations’ and the ‘Declaration of Essential Human Rights’ which are appended to the present Charter, and which are made an integral part thereof.*⁵⁹

The proposed Declaration gained a simple, but not qualified two-thirds, majority to pass. As stated by Stettenius, “the four

Sponsoring Governments agreed that an enumeration of individual and collective human rights and fundamental freedoms in the Charter could not be attempted at this Conference”.⁶⁰ Stettenius suggested that this should be “promptly undertaken” by the Commission on Human Rights to be established by the Economic and Social Council (ECOSOC) and be accepted by all Member States as part of their internal systems of law.

Of interest here is the political support for Panama’s proposal to expressly link peace and security with observance of human rights and elevate it to become the primary purpose of the Organization. It is equally noteworthy that it received a simple majority of the votes. In the same spirit, Colombia advanced the idea of a new Preamble that would commit Member States:

I. To declare that the international recognition and protection of the essential rights of the individual is a necessary condition of peace, both within States and in their relations with other.

It should also be recalled that such support was voiced by smaller States across all regions⁶¹ — dispelling the oft referred notion or perception of human rights as a Western agenda or construct.

As the Charter’s provisions are interdependent and indivisible, could it not be argued that the obligation of Member States to first and foremost settle their disputes peacefully in fact also implies an obligation to take measures to ensure respect for human rights? Therefore, to advance proposals to strengthen the protection and enjoyment of human rights as a central and practical instrument in settling disputes peacefully becomes not only a morally legitimate but also legally sound, politically

viable and expected argument and tool for a United Nations mediator? It is often the balancing act in achieving such objective – the how – that is the difficult question against the backdrop of ongoing violations, violence and conflict. Responding to that question stands at the heart of this study.

The Secretary-General as the “moderator”

Travaux préparatoires are generally considered a main source for the interpretation of a treaty. The aim of this overview has been to illustrate that the firm support for strong Charter provisions on human rights, international law and justice in San Francisco were based on a political conviction that domestic and international peace depended on those conditions. To paraphrase Stettenius, the people of the world demand the defence of human rights and is the most important thing we can do for peace. The ample political authority of the Secretary-General under article 99, including mediation, and the power of the Council to take action and recommend measures under Chapter VI, including requesting the good offices of the Secretary-General, can thus be read against such a broad interpretation of the Charter.

The central role of the Secretary-General in this regard is reinforced by the proposal made by President Roosevelt at the early stages of the San Francisco negotiations. He proposed that the Chief [Administrative] Officer of the Organization be called “the Moderator”. Secretary-General U Thant later wrote that he “knew of no better single word

to describe my own idea of the Office. I have always felt that the most important political duty of the Secretary-General was to concentrate on the harmonizing functions of the United Nations as set out in Article 1 (4) of the Charter”.⁶² Sir Brian Urquhart recalled the discussions in more detail:

*Roosevelt was the person who suggested the best title for the Secretary-General, which was “Moderator”, and the British said it might be confused with the Moderator of the Church of Scotland, so they got Secretary-General instead. But Moderator really is what he has to be, and that is a political function by someone who is not a politician himself. [...] It seems to me that it also indicates that there is a very important function, Moderator, especially in extreme cases where no one else can deal with the problem. [The] Secretary-General should be involved as the moderator, mediator, go-between, honest broker [...] the person who everybody can trust, the person who is regarded by everyone as objective.*⁶³

In light of the foregoing, the definition of the Secretary-General as a “normative mediator” is particularly interesting.⁶⁴ The impartiality of the Secretary-General resides in their representing the universal norms and values espoused in the Charter and the Secretary-General’s unique legitimacy and authority derive from the same. These are not only what make the Secretary-General stand above politics, as Sir Brian Urquhart argued, but enables the Secretary-General to exercise political influence by helping parties to a dispute to resolve their disagreements through persuasive communication based on international law and

universal human rights. This role and responsibility of “harmonizing the actions” through normative mediation is arguably one of the most important functions of the Secretary-General in supporting Member States attain the Purposes of the Charter.

The Charter of the United Nations and the relationship between

Article 33 (Peaceful Settlement of Disputes) and Article 55 (Human Rights as a Condition for Peaceful Relations among States)

Article 33 of the Charter:

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

When Mr. Morgenstierne of Norway, President of Commission III on the Security Council, introduced consideration of the report of the committee dealing with peaceful settlement, he noted that the matter “goes to the heart of our endeavours” and is “our common line of defence”.⁶⁵ While the committee examined in total 55 amendments to the Dumbarton Oaks text, the actual changes to Article 33 were few. Specifically, “inquiry” and “resort to regional agencies or arrangements” were added as modalities of peaceful settlement, and “may” seek a resolution was changed to “shall” — so as to emphasize the duty under the Charter of Member States to resolve their disputes by peaceful means.⁶⁶

However, Australia raised a reservation, concerned with this issue. It hit a nerve that persists today:

“But what is to be the position if the parties do not take action [...] and do not endeavor to settle their dispute by peaceful means? That is the crux of the position. Is the Security Council

merely to retain the power to call upon them to settle their disputes by peaceful means, or should it not, after a reasonable time has elapsed, be obligated to call upon the parties to settle their disputes by such means? It might appear a technical point but it is not, because the Security Council's work will, we hope, lie in the peaceful conciliation of parties to important disputes, and it should not merely be a discretion with the Security Council to act or not to act as it deems fit.”⁶⁷

Among the responses, Mr. Stassen of the United States delegation, said that “there is no question of the overriding duty and obligation to maintain the peace. It also provides that in discharging these duties to maintain peace and security, the Security Council shall act in accordance with the purposes and principles of the entire Organization.” This is an important point. Article 24 (2) indeed specifies that the Security Council shall act in accordance with the Purposes and Principles of the United Nations in discharging its duties. This includes, of course, respect for human rights as outlined in Article 1(3).

Mr. Stassen continued: “[And] may I also express the hope, as I know is the hope of the peoples of the world, that this section of this

Charter [i.e. on pacific settlement] may be the Section that will be used more than any other, unless it be the Social and Economic Section in providing for the advancement of the welfare of the peoples of the world.” The ‘Social and Economic Section’ refers to Chapter IX of the Charter on International Economic and Social Cooperation. Its article 55 identifies respect for human rights and fundamental freedoms as a condition for peaceful relations among Member States:⁶⁸

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: ... (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Following the analysis of discussions on the interrelationship between human rights and peaceful settlement of disputes during the negotiations of the United Nations Charter, and the preceding conceptual framework on the nexus between human rights and mediation, the subsequent chapters will present eight mediation processes by the United Nations and other organizations and actors.

4 Palestine

The first
United
Nations
mediator
and human
rights

The establishment of the first official United Nations Mediator was as unique as its mandate and the conflict it aimed to resolve. General Assembly Resolution 186 (S-2) of 14 May 1948 – the day the State of Israel was proclaimed and a day before the outbreak of the first Arab-Israeli war – “empower[ed] a United Nations Mediator in Palestine” to:

(1) use his good offices to (i) arrange for the operation of common services necessary for the safety and well-being of the population of Palestine; (ii) assure the protection of the Holy Places, religious buildings and sites in Palestine; and (iii) promote a peaceful adjustment of the future situation of Palestine; and to (2) cooperate with the Truce Commission; and

*(3) “to invite, as seems to him advisable, with a view to the promotion of the welfare of the inhabitants of Palestine, the assistance and cooperation of appropriate specialized agencies of the United Nations such as the World Health Organization, of the International Red Cross, and of other governmental or non-governmental organizations of a humanitarian and non-political character”.*⁶⁹

As this section aims to illustrate, the mandate and substance of its implementation had, in essence, a solid basis in human rights.

The Mediator, Count Folke Bernadotte, was appointed not by the Secretary-General nor the Security Council but by a General Assembly committee composed of representatives of the Permanent Members of the Security Council.⁷⁰ Only four months into his mandate, on 17 September 1948,

Bernadotte was assassinated in Jerusalem. During the course of his brief service for peace, Bernadotte negotiated the first truce in Palestine (11 June – 9 July 1948) and thereafter presented tentative suggestions to the parties “on the basis of which further discussions might take place and possibly counter suggestions be put forth looking toward a peaceful settlement of this difficult problem”.⁷¹ Specifically, in a letter to the parties dated 27 June 1948, Bernadotte proposed that Palestine, as defined in the original Mandate entrusted to the United Kingdom, might “form a union comprising two members, one Arab and one Jewish”.

In the proposed union, Bernadotte suggested that “religious and minority rights be fully protected by each member of the Union and guaranteed by the United Nations”.⁷² It was proposed that “recognition be accorded to the right of residents of Palestine [...] to return to their homes without restriction and to regain possession of their property”.⁷³ This is considered to be the first time that the formulation of the right of return of the Palestinian people appears.⁷⁴

Both parties rejected Count Bernadotte’s proposal.⁷⁵ Hostilities resumed in early July 1948. After a refusal by the Arab states to prolong the June 1948 truce, the Security Council declared the situation a threat to the peace, called for an immediate ceasefire and “urged the parties to continue conversations with the Mediator”.⁷⁶ In parallel with renewed fighting, the refugee situation became increasingly alarming, with an estimated 700,000 Arabs displaced from their homes by mid-1948. Bernadotte proposed, “for humanitarian reasons and because I consider the principle sound and the danger to Jewish security slight” that the Provisional Government of Israel accept the principle that a limited number of refugees be permitted to return to their homes.⁷⁷ The response was negative. In reporting to the Security Council on 1 August 1948, Bernadotte reasserted his “firm view that the right of the refugees to return to their homes at the earliest practicable date should be affirmed”.⁷⁸

The Mediator re-emphasized his belief that the right to return and a peaceful settlement were intertwined in what would become his last Progress Report to the General Assembly in September 1948:

*It is [...] undeniable that no settlement can be just and complete if the recognition is not accorded to the right of the Arab refugee to return to the home from which he has been dislodged by the hazards and strategy of the armed conflict between Arabs and Jews in Palestine. [...] It would be an offence against the principles of elemental justice if these innocent victims of the conflict were denied the right to return to their homes [...].*⁷⁹

In the words of his successor, Ralph Bunche, there was “irony as well as tragedy in Jerusalem on that fateful day on September 17 [as] just twenty-four hours before, Count Bernadotte had signed his [report], which had accepted without question the existence of the State of Israel and which had strongly urged that the truce in Palestine must be promptly superseded by a permanent settlement”.⁸⁰

Bernadotte has been called “the father of the right to return”⁸¹ and, as his reports suggests, appears to have been the first United Nations official to publicly pronounce and call for this right. Three months later, on 11 December 1948, the General Assembly, having considered Bernadotte’s last Progress Report, adopted resolution 194 which resolves that “the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property.”⁸²

As noted by Adelman and Barkan, the resolution did not contain a right of return, but rather took a hortatory tone — i.e. that the refugees should be permitted to return.⁸³ In terms of international law, some have claimed that the right of return was already established under customary international law at the time of Bernadotte, including as reportedly acknowledged by the United States delegate that the General Assembly was creating no new rights in that the above paragraph (11) of resolution 194 “endorsed a generally recognized principle and provides a means for implementing that principle”.⁸⁴

From a human rights perspective, and of particular importance to this study, Bernadotte’s final Progress Report to the General Assembly in September 1948 was remarkable in yet another way. Noting his duty to acquaint United Nations Member States with “certain conclusions” on means of peaceful adjustment, he presented seven basic premises. These included the “right of repatriation and international responsibility”, “particularly with regard to boundaries and human rights”.⁸⁵ On this basis, Count Bernadotte presented “specific conclusions” which, in his view, provided “a reasonable, equitable and workable basis for settlement”. They included, notably:

(i) The right of the Arab refugees to return to their homes in Jewish-controlled territory at the earliest possible date should be affirmed by the United Nations [...]

*(j) The political, economic, social and religious rights of all Arabs in the Jewish territory of Palestine and of all Jews in the Arab territory of Palestine should be fully guaranteed and respected by the authorities.*⁸⁶

Respect for fundamental human rights for all Arabs and Jews were thus outlined as a key element in a framework that, in the Mediator’s opinion, could provide for a peaceful settlement of the Palestinian dispute. On the 75th anniversary of his death, the United Nations Relief and Works Agency (UNRWA) reflected that “many of the underlying assumptions of [our specific] interventions — particularly our rights-based protection work — find their first expression in Count Bernadotte’s early reporting to the UN Headquarters. The links we make today between satisfying humanitarian need and creating an environment in which peace can take hold, were first given voice by him.”⁸⁷

Ralph Bunche — as Bernadotte’s deputy — carried on Count Bernadotte’s work as Acting Mediator and successfully steered “tortuous and difficult” negotiations between Israel, Egypt, Lebanon, Syria and Jordan.⁸⁸ With the conclusion of four separate Armistice Agreements, transmitted to the Security Council in July 1949, the fighting in Palestine came to an end, the mission of the United Nations Mediator had been fulfilled and the transition from truce to permanent peace begun.⁸⁹ The right of return did not feature in the agreements, but a provision set out that the inhabitants living in villages affected by the Armistice Demarcation Line shall “be protected in their full rights of residence, property and freedom”.⁹⁰ This achievement through skillful shuttle diplomacy and resolve earned Bunche the Nobel Peace Prize in 1950. The peace held until 1967, with the outbreak of the Six Day War. In November the same year, the Security Council requested the Secretary-General to designate a Special Representative to assist efforts to achieve a peaceful and accepted settlement.⁹¹

The 1993 Oslo Accords

In contrast to Count Bernadotte's vision for a peaceful settlement in Palestine, the 1993 Oslo Accords — or “The Declaration of Principles on Interim Self-Government Arrangements (DOP)” — signed on 13 September 1993 by the Government of Israel and the Palestinian Liberation Organization (PLO) have been referred to as “virtually absent” of human rights considerations.⁹² In a comparison with human rights inclusion in the peace negotiations in Colombia, Fuentes-Julio and Raslan situate the Israeli-Palestinian peace process under Oslo at the opposite end of the spectrum. The Oslo Accord, they note, does not refer to human rights (or human rights principles) or explicitly to the right of self-determination of the Palestinian people, but only recognizes the “rather ambiguous ‘mutual legitimate and political rights’ of the two sides”.⁹³ The subsequent interim agreements signed between the two parties between 1993 and 1999 also rarely contain any explicit human rights references or provide for any institutions for human rights protection or to address past violations. It is pointed out, rather, that some of the agreements suggest that international human rights are subject to the peace agreements, not the other way around.⁹⁴

In addition to the fact that the negotiation process lacked in inclusivity and representation, Fuentes-Julio and Raslan identify four reasons for the absence of human rights in the agreements. First, the relative power of Israel and its primary focus on security and order; second, the perception of the conflict as a territorial dispute; third, the fact that the PLO leaders at the time tended to focus more on self-determination rather than other basic human rights (due, in part, to the PLO's interest to be able to control opposition groups challenging its authority); and fourth, the absence of pressure from the international community. The authors conclude that “the Israeli-Palestinian experience shows that excluding human rights from a peace process can contribute to a failure to achieve even a negative peace.”⁹⁵

This can be understood and situated against the broader backdrop and nature of the political objectives of the agreement. As argued by Bell: “Individual human rights provisions (both forward-looking and backward-looking) are crucially shaped by the deal at the heart of the peace agreement. The central deal controls whether human rights provisions are addressed at all. Where the deal in essence moves towards a complete ‘divorce’ between peoples and partition of territory, as in the case of Israel/Palestine, then the political elites of both sides may not have an interest in seeing human rights provisions written into the text of the divorce agreement”.⁹⁶

5 The status of Bahrain

A “unique
departure
from United
Nations
customary
practice”

The role of the United Nations in mediating a peaceful solution regarding the future status of Bahrain in 1970 has been described as “a textbook example of settling a dispute by quiet diplomacy before it degenerated into conflict”⁹⁷ and a “unique departure from United Nations customary practice”.⁹⁸ It was the first time the Secretary-General dispatched a mission to a territory with a view to determine the peoples’ wishes concerning its future political status. Specifically, upon a request from Iran (supported by the United Kingdom), the Secretary-General was to exercise his “good offices with a view to ascertaining the true wishes of the people of Bahrain with respect to the future status of the Islands by appointing a Personal Representative to carry out this mission”.⁹⁹ The mission would put to rest historical claims to the Gulf island by Iran and the United Kingdom respectively¹⁰⁰ and pave the way for Bahrain’s independence.

The right to self-determination — an essential condition for human rights

From a human rights perspective, Bahrain is an interesting case as it fundamentally concerned a mediation process under United Nations auspices which promoted, and resulted in, an act of self-determination. Self-determination is both a principle and a purpose of the United Nations. During negotiations on the Charter, the Soviet Union proposed to add specific reference to the principle of equal rights and self-determination of peoples in the text on Purposes:

To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.¹⁰¹

The United States delegation agreed that it would be difficult to oppose the principle,¹⁰² and hence the above quote became Article 1(2) of the Charter. Self-determination is also a foundation for the enjoyment of human rights. Common Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) stipulates that all peoples have the right of self-determination, by virtue of which “they freely determine their political status and freely pursue their economic, social and cultural development”. The United Nations Human Rights Committee has determined that the right of self-determination “is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights [and is therefore] placed apart from and before all of the other rights in the two Covenants”.¹⁰³

The inherent interrelationship between peace, self-determination and human rights is also given effect in the Charter, as the drafters themselves saw and intended such interconnection.¹⁰⁴ Article 55 (3) stipulates that the United Nations, “with a view to creating conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”, shall promote “universal respect for and observance of human rights and fundamental freedoms for all”.

In mediation and negotiation processes, self-determination is often a contentious point in, and often the cause of, a dispute. Correspondingly, it can be an essential element in the resolution of conflict.¹⁰⁵ The distinction between “external” and “internal” self-determination is pivotal in this regard.¹⁰⁶ As Max van der Stoep, the first High Commissioner on National Minorities of the OSCE, noted: “While ‘external’ self-determination through secession is fraught with the potential for conflict, ‘internal’ self-determination is an alternative offering a great variety of solutions to accommodate the

vital interests and aspirations of minorities — such as effective participation of minorities in public decision-making through electoral processes as well as mechanisms for dialogue, various forms of functional autonomy, and much more.”¹⁰⁷

The Secretary-General “stands firm on his right” to send a personal representative

In the case of Bahrain, Al-Baharna notes that the right of self-determination was implicitly invoked by the Shah of Iran when announcing, on 9 March 1970, his abovementioned request for the use of the Secretary-General’s good offices.¹⁰⁸ The United Kingdom accepted the request by Iran two weeks later. The request followed two years of secret negotiations between the United Kingdom and Iran,¹⁰⁹ which concluded through informal discussions between the two parties and Bahrain, facilitated by Ralph Bunche. As the United Nations mediator, Bunche succeeded in helping the parties reach agreement on the Terms of Reference of the Personal Representative of the Secretary-General and a document containing nine points of procedure for his mission. The latter ascertained that the Personal Representative, in carrying out his functions, will “take due regard of the purposes and principles of the United Nations Charter”.¹¹⁰

On 28 March 1970, U Thant informed the Security Council of his designation of Vittorio Winspeare Guicciardi, Director-

General of the United Nations Office at Geneva, as his Representative and his Terms of Reference, which were:

Having regard to the problem created by the differing views of the parties concerned about the status of Bahrain and the need to find a solution to this problem in order to create an atmosphere of tranquility, stability and friendliness throughout the area, the Secretary-General of the United Nations is requested by the parties concerned to send a Personal Representative to ascertain the wishes of the people of Bahrain.¹¹¹

In particular, the Secretary-General specified that, in agreeing to exercise his good offices, he had in mind:

[...] that actions such as this, at the request of Member States, have become customary in United Nations practice and have proved to be a valuable means of relieving and preventing tension by a quiet approach in certain situations which could only be prolonged or aggravated by premature disclosure and public debate. In the Secretary-General's view such resort by Member States to the process of peaceful settlement of differences in accordance with the principles of the Charter is to be welcomed and encouraged.¹¹²

An interesting episode preceded the Secretary-General's announcement and prompted some amendments as per the italicized text above. When the United Kingdom informed the United States, France and the USSR of the "Bahrain good offices project", the USSR reiterated its "standing position that the Secretary-General had no right to undertake such responsibility without prior consultation with the [Security Council]" – a position first taken by the USSR during Dag Hammarskjöld's tenure.¹¹³ However, as Bunche relayed to Winspeare, the Secretary-General "does not accept it and stands firm on his right".¹¹⁴ The announcement made clear, however, that the findings of his Representative were subject to the "ultimate action by the Security Council", as requested by the two parties.

The mission of the Personal Representative took place from 30 March to 18 April 1970. Winspeare was given a broad mandate by the Secretary-General: To seek such information, make such inquiries and hold such consultations with the people of Bahrain, leaders of organizations, societies, institutions and groups, ordinary citizens and other persons as in his judgement might be useful in fulfilling his assignment. To this end, Winspeare had been given a list of organizations and institutions among which he could select those bodies providing the best and fullest cross-section of opinion among the people of Bahrain. Upon arrival, Winspeare issued a public statement which underscored that everyone had "ready and free access to my mission" and would be able "to express their views on the question at issue freely, in private and in confidence".¹¹⁵ These principles had been negotiated by Ralph Bunche in Geneva as outlined in the document on the nine points of procedure referred to above. In particular, Winspeare noted: "The Secretary-General has accepted this request [by Iran and the United Kingdom] because of his conviction that when there is an issue affecting people, the wisest approach is first to determine what the people themselves think by inviting them to express their wishes of this issue."¹¹⁶

Winspear met with all recommended entities and, in addition, with the religious waqfs, organizations concerned with “social welfare” such as the Red Crescent Society and women’s associations and so called “clubs” throughout the island, some of which engaged in “community action in the improvement of social conditions”. To this end, Winspeare travelled outside of Manama, where his office was based, to visit various villages to hear the views of the mukhtars (village heads) and assembled members of the community.¹¹⁷ As a result, Winspear met with a large number of Bahrainis from many walks of life — the consultations with whom, he concluded, “have convinced me that the overwhelming majority of the people of Bahrain wish to gain recognition of their identity in a fully independent and sovereign State free to decide for itself its relations with other States”.¹¹⁸

On 11 May 1970, the Security Council unanimously endorsed the report of the Personal Representative and welcomed his conclusion.¹¹⁹ That the mission in fact represented a new experiment in the Secretary-General’s good offices’ toolbox — but a right of initiative that the Secretary-General was adamant to assert — was expressed in the statement by the French Representative, presiding at the time as the President of the Council, who remarked that it was “a special case which cannot be considered as having established a precedent”.¹²⁰ Nevertheless, France was convinced that “what was accomplished was within the spirit of the United Nations Charter which requires that Member States seek a peaceful solution to their disputes” and that “there is no reason why one cannot depart from customary means, and the solution has demonstrated imagination”.¹²¹

Ralph Bunche, who presided over the negotiations between Iran and the United Kingdom and worked tirelessly despite failing health to see them reach agreement on the mission, has largely been credited for the successful and peaceful resolution of the Bahrain case. U Thant is said to have called the Bahrain mission “the perfect good offices operation [...] one which is not heard of until it is successfully concluded, or even heard of at all”.¹²² The

United Nations would later play a critical role in facilitating the realization of the right of self-determination in various situations, including in Namibia and East Timor.

Bahrain is an important and interesting case study for this research. It demonstrates that also without an explicit human rights mandate or objective, the creativity of the mediator and the process and methodology crafted for settling a dispute by peaceful means matter significantly and can directly contribute to an outcome of a mediation process that enables the enjoyment of human rights. In this case, the process, as designed after Bunche’s mediation, enabled Bahrain to exercise its right to (external) self-determination through a peaceful settlement between the parties by having “ascertained the wishes of the people”. This case study is equally relevant in that it also showcases the exercise of the Secretary-General’s political authority above politics in pursuit of the ultimate interest and will of the people. This — the “secretariat’s space for maneuver” — has been identified as “the most significant resource” in a mediation process, based on article 99 of the Charter.¹²³

6 The Iran-Iraq war

Human
rights as a
confidence-
building
measure

During the Cold War, human rights did not feature as prominently or explicitly in the United Nations' political engagement compared to the post-1989 era. This was the case also in the efforts of the Organization to end the 1980–1988 conflict between Iran and Iraq which claimed over one million lives.¹²⁴ However, a closer look reveals that some of the confidence-building measures initiated by the United Nations' mediation team were human rights-oriented in nature and impact, and thus deserve attention.

United Nations mediation at the Secretary-General's own initiative

The United Nations was formally seized of the escalation between Iran and Iraq on 23 September 1980 when Secretary-General Waldheim, following an Iraqi air attack on Iran, invoked article 99 of the Charter and requested an urgent meeting of the Security Council.¹²⁵ The Council passed resolution 479 supporting the good offices of the Secretary-General and calling on the two countries to “refrain immediately from any further use of force” and to settle their dispute by peaceful means.¹²⁶ Throughout the conflict, all resolutions — until resolution 598 (1987) — were accepted by Iraq but rejected by Iran who perceived the Council's failure to identify and condemn Iraq as aggressor and to request its withdrawal from Iran as proof of the Council's bias towards it. Early on, Iran made clear that it would engage with the Secretary-General only.¹²⁷ The two parties would not engage in direct talks until August 1988.¹²⁸

While the Council's favouring of Iraq was problematic for the United Nations mediation, the separation between the Security Council and the Secretary-General and his

Personal Representative was also said to have enabled the latter — first Olof Palme (1980–1986) and, at a later phase, Jan Eliasson (1988–1992) — to gain access to and credibility with Iran.¹²⁹ While the Council welcomed the fact that the Secretary-General was considering sending a representative to the region “in order to facilitate authoritative communication with and between the governments concerned so that negotiations for peace could proceed on an urgent basis”¹³⁰, the Secretary-General's appointment of Palme in November 1980 was his own initiative.¹³¹

In this highly restrained if not deadlocked political setting, Palme realized that a comprehensive approach to the mediation — while preferable — would be difficult to pursue. In 1983–1984, therefore, a step-by-step approach was initiated.¹³² This entailed the development of confidence-building measures, key among which was the proposal to the parties in June 1984 to end attacks on civilian border villages. An aerial attack on Baneh, Iran, on 5 June 1984, followed by retaliatory attacks in both countries, prompted the Secretary-General to appeal directly to the parties to end attacks on civilian areas. Heavy civilian casualties had been inflicted, in response to which United Nations sent inspections missions in 1983 and 1984.¹³³

Jan Eliasson, who worked closely with Palme, recalls that this was the most successful among the confidence-building measures. As Eliasson put it, the beauty lay in that fact that both parties committed directly to the Secretary-General not to attack civilian targets.¹³⁴ A bilateral agreement between the parties would have been impossible due to deep mistrust between them and a wish not to confer legitimacy onto the other. Noting that deliberate military attacks on civilian areas could not be condoned by the international community, Secretary-General Pérez de Cuéllar called on the two Presidents to undertake “a solemn commitment to end, and in the future refrain from initiating, deliberate military attacks, by aerial bombardment, missiles, shelling or other means, on purely civilian population centres”.¹³⁵ Both parties accepted,

in what is known as the “12 June 1984 moratorium”. At the request of both Governments, the United Nations deployed teams composed of military personnel from the United Nations Truce Supervisory Organization and staff from the United Nations Secretariat to Baghdad and Tehran respectively to independently verify and report on compliance.¹³⁶

The agreement is described by Eliasson as “a humanitarian step which had human rights aspects” and which has largely gone unnoticed.¹³⁷ It was seen as a way of reducing violence, adhering to international norms of warfare, i.e. international humanitarian law, and creating more confidence between the parties.¹³⁸ Initially, the agreement held and attacks on civilian cities were halted (for ten months), allowing Palme and his team to return with new confidence-building measures in order to decrease the mistrust and in the hope that this would pave the way for substantial negotiations on core issues.¹³⁹ Other measures included proposals on restrictions on attacks against the sea traffic in the Persian Gulf and a scheme to clear the Shatt Al-Arab.¹⁴⁰

The use of chemical weapons — “one of the gravest infringements of international norms”

During the war, the Secretary-General initiated several investigations to verify Iranian claims of the use of chemical weapons during the war. Iqbal Riza, then Director of the Office of Under-Secretary-General for Special Political Affairs, “was courageous enough to suggest [the first mission]”, which deployed in 1984.¹⁴¹ Palme and Eliasson strongly supported the proposition. Riza recounts the episode:

I went to inform the Secretary-General that Iraq had used chemical weapons that were outlawed by the 1925 Geneva Protocol. After having consulted with the Office of Legal Affairs and his senior adviser, the Secretary-General came back. He told me “You have persuaded me” and instructed me to go to Iran and Iraq to verify. We [Riza and technical experts] first went to Iran. We could see that mustard gas had been used. In Iraq, we saw no trace of chemical weapons.¹⁴²

Iqbal Riza accompanied the technical verification mission and recalls the terrible sights of the impact of the use of chemical weapons on civilians while visiting a hospital near Baneh.¹⁴³

The deployment of the verification mission at the Secretary-General's own initiative and authority was unprecedented. When de Cuellar transmitted its report to the Security Council, he emphasized that until an end to the conflict was achieved, it was "incumbent upon him, in accordance with internationally accepted humanitarian principles, to minimize the suffering caused by war on civilians".¹⁴⁴ The report concluded that Iraqi forces had used, on many occasions, chemical weapons. On transmission of a fourth mission report, the Secretary-General condemned the violation of the 1925 Geneva Protocol as "one of the gravest infringements of international norms".¹⁴⁵ It was only after the fifth investigation, in 1988, that the Security Council adopted its first resolution directed solely on this issue, condemning the use of chemical weapons but without deciding on any binding measures nor sanctions on any of the parties.¹⁴⁶

Retrospectively, it has been suggested that the handling of Iraq's use of chemical weapons may have reflected a strategy. Through the separate handling of this issue by Iqbal Riza at United Nations Headquarters, and the technical nature of the investigation missions, the mediation was "protected or insulated from the problem" and enabled the Secretary-General to "act on both fronts at the same time".¹⁴⁷ Such separation may not, however, have been consciously contemplated at the time. Notably, ending the use of chemical weapons was part of an eight-point plan designed to attain a comprehensive settlement to the conflict which was presented to the parties in March 1985.¹⁴⁸ Specifically, it represented the Secretary-General's efforts to "promote a ceasefire of the conflict and to work out, in consultation with the parties, proposals toward comprehensive arrangements to address the issues underlying the conflict".¹⁴⁹

According to the eight-point plan, or "non-paper", both sides were to "inform the Secretary-General [...] by 8 April 1985 that they are committed to observing the provisions of the Geneva Protocol of 1925 on chemical and bacteriological weapons".¹⁵⁰ It also included a commitment on both sides to "inform the Secretary-General [...] that they will cease all attacks on civilian population centres [...] by 26 March 1985" as well as "cooperate with the ICRC in arranging an exchange of POWs (prisoners of war)".¹⁵¹ At the time, the war had intensified,¹⁵² with the 12 June 1984 moratorium on attacks on civilian areas becoming moot.

As noted above, the Secretary-General consistently couched the use of chemical weapons and its impact in humanitarian terms. It may have been the Charter's human rights principles that he alluded to when deciding to dispatch the first verification mission, "conscious of the humanitarian principles embodied in the Charter and of the moral responsibilities vested in his office".¹⁵³ Also, for the Secretary-General to point to human rights violations at that time could have been seen as interfering in the conduct of warfare between two sovereign states.¹⁵⁴

Jan Eliasson recounts how deeply Palme and himself regretted that these reports were not taken seriously by the international community. Eliasson also notes that moving ahead with confidence-building measures was difficult in a context where both sides saw "positive signals as signs of weaknesses". Nevertheless, he describes Palme's and his own contribution as United Nations mediators, that of "mainly to keep the dialogue, even if indirect, going between the parties".¹⁵⁵ That, however, led to the saving of many lives through the end of the bombing of the two capitals and border cities, and after the cease-fire of 1988, to a consolidation of the cease-fire and to the release of sick and wounded prisoners of war.¹⁵⁶

This is no small feat. In fact, Ferretti concludes in his evaluation of the United Nations' role in the Iran-Iraq war that, despite the shortcomings of the Security Council, "considering the efforts of the Secretaries-General

and the obstacles they overcame, the ceasefire of 1988 should be regarded an achievement".¹⁵⁷ In this regard, Ferretti specifically refers to the variety of approaches they employed, including mediation efforts, fact-finding missions and the effort to limit the scope of the war by ending attacks on cities.¹⁵⁸

Translating international norms into the language of the interlocutor¹⁵⁹

A central element in the United Nations' mediation efforts in the Iran-Iraq war was to resort to principles of international law and provisions of the Charter. Eliasson recalls that awareness of basic principles of international law by the parties in the early years of the war was scant. In this context, translating international norms into the local religious and cultural language proved powerful. He remembers a specific incident where Palme and his team held discussions with the Iranians on the issue of non-acquisition by force and a proposal that would allow a three-week period for the Iraqis to withdraw to internationally recognized boundaries.

As the discussion stalled, Palme asked his team whether any reference in the Quran may help unblock the negotiations. Iqbal Riza identified a Sura which says that if the enemy turns his back at you, you are not allowed to attack him. "Now we started that negotiation with those words and the Iranians were

touched, almost moved to tears, that we had cited the Quran, had found an opening in the Quran. I still remember [...] a revolutionary saying, 'Thank you for showing respect for our religion and culture'".

On this issue, Jan Eliasson identifies, in his recent memoirs,¹⁶⁰ four factors which in his experience and view determine whether or not success is achieved in mediation or negotiations.

The word or words
that are used

The timing of the
event or proposal

Cultural
understanding

Personal relations
and personality

7 El Salvador

“Peace through a framework for human rights”

Almost uniquely, human rights were a fundamental objective at the outset of the negotiation process between the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN), the leftist guerilla group. The Geneva Accords of 4 April 1990 set out that the purpose of the process was “to end the armed conflict by political means as speedily as possible, promote the democratization of the country, guarantee unrestricted respect for human rights and reunify Salvadorian society”.¹⁶¹ The Geneva Accords further specified that its initial objective was “to reach political agreements which lay the basis for a cessation of the armed conflict and of any acts that infringe the rights of the civilian population, which will have to be verified by the United Nations [...]”. The signing not only reflected that the two sides had reached a so called mutually hurting stalemate,¹⁶² but also bore witness of the ideological winds of change in the wake of the fall of the Berlin Wall a year earlier.

The Geneva Accords constituted the only substantive guidance for the peace process which the United Nations was requested to mediate by the two parties under the auspices of the Secretary-General’s Personal Representative for the Central American Peace Process, Álvaro de Soto. Appointed by Perez de Cuéllar in September 1989, de Soto led the negotiations that would end the twelve year-long civil conflict in El Salvador with the signing, in January 1992, of the Chapultepec Agreement in Mexico City.¹⁶³ Human rights standards and objectives — especially those related to civil and political rights — played a central role throughout the mediation process, which was the first time that the United Nations attempted to broker the end of an internal conflict.¹⁶⁴ In this regard, when Security Council lent support to the Secretary-General’s good offices in 1989, it indirectly dispelled the notion that human rights and non-interference into internal affairs were mutually exclusive. It was convinced, rather, of “the peoples of Central America wish to achieve a peaceful settlement of their conflicts without external interference [...] with respect for the principles of self-determination

and non-intervention while ensuring full respect for human rights”.¹⁶⁵

In his personal account, de Soto relays that the items of the substantive agenda for the talks were proposed by the FMLN.¹⁶⁶ Reform of the armed forces was its top priority, second came the question of human rights, followed by the judicial system, constitutional reform, economic and social issues and verification by the United Nations. De Soto explains that the Government at the time (spring 1990) still approached the exercise more as a dialogue than a negotiation, and therefore did not object to any of the items proposed or their order. The Government also agreed, to his surprise, to FMLN’s proposal that the initial objective would be to reach political agreements on the substantive agenda items before a ceasefire would be negotiated. It should be recalled in this context that the Government’s primary objective during the negotiations was to end the war, whereas the FMLN had a much broader political objective of creating a new society in which it could be active in politics.¹⁶⁷

In this context, Joaquín Villalobos, a former leader of the FMLN, recalls that the negotiations started at a time when human rights became part of world politics and of the political agenda of the left.¹⁶⁸ Villalobos notes that human rights were “an agenda that the Government could not reject”, as it did not wish to appear as a dictatorship in the eyes of the international community.¹⁶⁹ The defining turning point that marked the start of negotiations, he notes, was the brutal killing by the Salvadorian army of six Jesuits and two others in November 1989, prompting a domestic and international outcry. In this regard, Villalobos reflects that both the start and end of the civil war were intimately connected to human rights violations: The killing of Archbishop Óscar Romero in February 1980 and of the Jesuits in San Salvador in 1989.

The San José Agreement on Human Rights — breaking an impasse and preparing for a United Nations presence

Only three months after the Geneva Accords, the first of the substantive agreements to be concluded was the San José Agreement on human rights, signed in Costa Rica on 21 July 1990. In addition to outlining a series of minimum standards for the protection of human rights, including an end to enforced disappearances and abductions, arbitrary and unlawful arrests, incommunicado detention and torture, it envisioned the establishment of a United Nations human rights verification mission.¹⁷⁰

What made it possible to conclude a human rights agreement as the first of several agreements in the midst of “wartime negotiations”?¹⁷¹ De Soto recounts that he presented the draft agreement in the context of stalled negotiations on the critical issue of the status of the armed forces.¹⁷² In preparation, he convened a meeting in Geneva with staff of the then United Nations Centre for Human Rights and experts on judicial issues and El Salvador to gather ideas of what a human rights agreement might look

like. Once back with the parties, de Soto suggested a pause in discussions on the armed forces and to change subject to human rights. The draft text prepared in Geneva was introduced. The meeting went long into the night, de Soto recalls. The following morning, the parties agreed to the proposed human rights agreement. As indicated above, it contained provisions of basic human rights protection of most relevance to the conflict-setting and close to verbatim language of the core United Nations human rights treaties to which El Salvador was a party.

Hence, as a text that sought to safeguard fundamental rights for all and that reflected the Government's existing international human rights commitments, de Soto notes that the San José agreement was relatively easy to agree on and helped break the impasse regarding the difficult topic of the armed forces.¹⁷³ Several contextual circumstances, or “correlation of factors”, made this possible, according to de Soto. Among these, the FMLN had a lot of leverage on human rights issues and had early on focused on respect for human rights by the Government as part of its agenda.¹⁷⁴ As such, FMLN enjoyed international political support on human rights, especially in the United States Congress. The end of the Cold War — and of the Reagan era — brought about radical change in terms of support by the United States to Central American regimes.¹⁷⁵ Third, the Government was fully aware of the FMLN's upper hand on the topic and was thus “eager to demonstrate that FMLN did not have monopoly on human rights”. This partly explained why the Salvadorian Government suggested to include the objective of “guarantee unrestricted respect for human rights” in the Geneva Accords. Fourth, de Soto as mediator had the full support and trust of Secretary-General Pérez de Cuéllar¹⁷⁶ and, in addition, political backing from the group of “friends” (Colombia, Mexico, Spain and Venezuela).¹⁷⁷ With de Soto's initiative in creating the latter group, El Salvador saw the start of Group of Friends as a tool to support UN-led mediation efforts.¹⁷⁸

Subsequent to the Secretary-General's proposal of an “integrated operation” to monitor compliance by the

Government and FMLN with all agreements concluded, commencing with the San José Agreement, the Security Council established the United Nations Observer Mission in El Salvador (ONUSAL) in May 1991.¹⁷⁹ The Secretary-General had then already fielded a mission to verify the human rights agreement, presented as a preparatory mission of ONUSAL.¹⁸⁰ Iqbal Riza, the first ONUSAL Chief, notes that this was indeed a tactic to get the mission started and that for six to eight months, only the human rights verification mission was on the ground in El Salvador.¹⁸¹ ONUSAL verification operations began a few months later in 1991,¹⁸² while the human rights component was deployed months before the cease-fire came into effect.¹⁸³

Chapultepec Agreement — a vehicle for human rights protection and promotion

There are several unique aspects of this process of relevance for this study. First, the San José Agreement allowed the negotiation process to proceed at a critical juncture as a practical measure (safety and protection). Forming an integral part of the final Chapultepec Agreement, de Soto underlines that it established human rights as the basis for and overall goal of all other provisions of the Peace Agreement.¹⁸⁴ Second, the presence of the human rights verification mission, and later ONUSAL, prior to the cease-fire significantly reduced violations through its impact on the armed forces and the level of repression.¹⁸⁵ ONUSAL's ability to deploy anywhere and enter any military facility without prior notice was a key element in the “dissuasive” or “preventive” impact of the mission. Its large scope and presence “made it difficult for the two sides to intensify the fighting or to walk away from the negotiating table. It was hard to fight in the presence of ONUSAL”.¹⁸⁶ Third, the mission's deployment was unprecedented and acted — as would future United Nations missions in Guatemala and Nepal — as a confidence-building measure and in that the peace process was bringing something tangible for the

parties.¹⁸⁷ Indeed, the Secretary-General had expressed his conviction that verification of human rights by ONUSAL would not only promote a significant improvement in the human rights situation, but also “act as a positive impetus to the negotiations”.¹⁸⁸

It should be noted that violence continued, however, with new FMLN offensives occurring after the signing of the San José Agreement. It would take several months before the thorny issue of the armed forces was agreed to by the parties. De Soto then introduced the idea of the establishment of an Ad Hoc Commission¹⁸⁹ to Evaluate the Officer Corps of the Armed Forces in El Salvador to overcome the stalemate between the FMLN (calling for the expulsion of a number of officers) and the Government (opposing expulsions). Members of the Commission were appointed by the Secretary-General and tasked with evaluating the officer corps to determine which members might have to be transferred or which services should be eliminated due to human rights violations, or because they were no longer deemed appropriate or fit within the reformed armed forces that were to emerge from the Peace Agreement.

In this regard, a human rights dimension facilitated political agreement in settling the most difficult aspect of the talks. Indeed, Villalobos highlights that the “purification” of the armed forces was among the most important elements, along with the programme of reintegration of the FMLN in society, that enabled the political transformation of the country.¹⁹⁰ Critically, the final Chapultepec Agreement sets out that the institutional regime and operations of the armed forces be “consistent with the principles deriving from the rule of law, the primacy of the dignity of the human person and respect for human rights”.¹⁹¹

In light of these new doctrinal principles of the armed forces, along with the establishment of a new national civil police, which was inclusive of former FMLN combatants, and an independent judicial system, the Chapultepec

Agreement itself represented a kind of “framework within which human rights could be enjoyed”.¹⁹² It could be argued, according to Álvaro de Soto, that its provisions were “a vehicle for the promotion of human rights”. “If you find that human rights are central in a conflict, if you have a correlation of forces and can produce viable agreements, that is when you should go for it, especially for post-conflict peace-building settings”.¹⁹³ Of particular importance in El Salvador, the final peace accord transformed the armed forces in several ways: a) they were no longer responsible for the maintenance of internal public order; b) they were clearly submitted to the authority of the elected civilian governmental authorities; and c) a new doctrine was approved, from which the overriding mission of counterinsurgency was eliminated. The first two required constitutional reform.¹⁹⁴

De Soto notes that the experience and leadership of the United Nations in bringing peace to El Salvador, and the centrality of human rights therein, played a key role in shaping Boutros Boutros-Ghali’s concept of “post-conflict peace-building” introduced in his 1992 Agenda for Peace.¹⁹⁵ It was clear to the Secretary-General that, going forward, this was where the United Nations role would lie, de Soto further recalls. The very definition of peace-building that it provides¹⁹⁶ reflects how the Salvadorian peace process sought to address some of the main underlying structural political and other causes of the civil war through a framework which advanced human rights protection, set in motion necessary institutional reforms and ensured political participation.

The Commission on the Truth and the issue of accountability

“What would you have done differently in El Salvador and, if so, what and why?”

When asking Álvaro de Soto the question, he immediately replied: “It was a mistake to rush the work of the Truth Commission”. Established in April 1991 by Perez de Cuéllar, the Commission on the Truth had a mandate of “investigating serious acts of violence that occurred since 1980 and whose impact on society urgently demands that the public shall know the truth”. It had broad powers: To gather any information it considered relevant, conduct interviews freely, and visit any establishment or place without prior notice. The Chapultepec Agreement of January 1992 expanded its mandate with the task of clarifying and putting an end to any indication of impunity on the part of the members of the armed forces.

Its timeframe was tight, however. The Commission was to present its report with conclusions and recommendations within six months. This meant that when the Commission, in March 1993, presented its hard-hitting, impressive report “From Madness to Hope: The 12-year War in El Salvador” to the Government, the FMLN and to the Secretary-General, the parties were still in the process of implementing the peace agreements. Notably, the Cristiani Government was still in place. With the report, which documented over 22,000 claims involving killing, torture and enforced disappearances during the armed conflict, attributing the vast majority of the serious human rights violations to the State, including by listing individuals involved, de Soto recalls the outrage of the President. Within a few days after its publication, a sweeping legislation was passed by the Salvadorian National Assembly granting amnesty to anyone — Government officials as well as FMLN members — accused of violations in the report.

Early on in the negotiations, during discussions on the status of the armed forces, FMLN had emphasized that the serious human rights violations and the prevailing impunity had to be addressed. De Soto specifically remembers Schafik Hándal, a prominent FMLN leader, calling for “Exemplary trials, Exemplary punishment”. The Government countered that proposal, rhetorically asking under what law and under which tribunal? The FMLN took the argument of the Government that under the existing Supreme

Court, everything would be “null and void”. Villalobos, recalling the events, notes that without the amnesty at the time, everything that had been achieved through the peace process could have been lost. Justice in the immediate aftermath of the conflict, he says, was attained in its aspect of non-repetition. “What is important is that the truth is spoken. A judicial process at the time would not have achieved that”, according to Villalobos.

In the wake of this impasse, de Soto put forward the proposal of the Commission on the Truth. After amendments by the parties, the final text establishing the Commission was decided on in the Mexico Agreements of 27 April 1991. Under those Agreements, the parties undertook to carry out its recommendations. Some positive steps have been taken, such as the Supreme Court’s repeal in 2016 of the Amnesty Law, recognition of state responsibility for acts of torture and killings in the Mozote massacre of 1981 and provision of reparations to survivors.

However, as of 2018, only 3 criminal cases — of the over 100 criminal complaints filed by victims over the years — had been reopened, and one local judge had reopened investigations into the actions of the armed forces in the El Mozote massacre. In conjunction with her visit to El Salvador in 2018, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions called for those timid steps to inspire a broader movement towards addressing the crimes of the past, thus paving the way for a healing process.

8 The OSCE High Commissioner on National Minorities

“A unique
instrument in
international
mediation”

From a human rights perspective, the mandate and role of the OSCE's High Commissioner on National Minorities (HCNM) is arguably the most unique and creative mediation and conflict prevention instrument established at the intergovernmental level. Agreed on at the Helsinki Summit of the Conference of Security and Cooperation in Europe (CSCE, OSCE as of 1994) in July 1992, against the urgent pressures of the unfolding war and human rights tragedy in the Balkans, its mandate sets out that:

The High Commissioner will provide “early warning” and as appropriate “early action” at the earliest possible stage in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but, in the judgment of the High Commissioner, have the potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between participating States, requiring the attention of and action by the Council or the CSO (Committee of Senior Officials).¹⁹⁷

As such, the HCNM was established as a conflict prevention mechanism concerned with the “security dimension” of the OSCE with several innovative elements as construed by Max van der Stoel, the first mandate-holder: Notably, an external third party that can become involved at the earliest stage possible of an impending conflict, at the HCNM's own discretion and without need of formal consent of the State concerned.¹⁹⁸ To this, van der Stoel added that the approach of the mandate was one marked by impartiality, confidentiality and cooperation. Together, these characteristics make the HCNM not only “a unique instrument in international mediation” but a unique achievement in international relations.¹⁹⁹

While the HCNM has no explicit human rights mandate, respect for human rights and fundamental freedoms are key to the OSCE's comprehensive security concept.²⁰⁰ In their work, Max van der Stoel and successive High Commissioners have relied on the OSCE's principles and commitments and international legal norms and standards, including human rights and notably minority rights. It is important to recall here that participating States in July 1992 also declared that human rights (within the "human dimension" of the OSCE) were of "direct and legitimate concern [which] do not belong exclusively to the internal affairs of the State concerned" and form "a vital basis for our comprehensive security".²⁰¹ Instead of presenting human rights and conflict prevention as separate domains, the OSCE through the High Commissioner on National Minorities "has made human and minority rights intrinsic to conflict resolution".²⁰²

With this understanding of the deep interconnection of OSCE's human and security dimensions, van der Stoel approached his role as that of "a facilitator working with the parties to find compromise solutions to inter-ethnic problems".²⁰³ He saw the human dimension as the "heart of the matter" of that undertaking: All situations he dealt with, Max van der Stoel stressed, "contained many human dimension aspects. Protection of persons belonging to national minorities begins with the respect of general human rights".²⁰⁴ In this context, van der Stoel was eager to point out that the founding document of the OSCE, the 1975 Helsinki Act, put the principle of human rights at the same level as more traditional principles such as territorial integrity, inviolability of borders and non-recourse to the use of force.²⁰⁵

A normative mediator

Steven Ratner has described the role of the High Commissioner on National Minorities as that of a normative mediator.²⁰⁶ Two recent High Commissioners, Ambassadors Knut Vollebaek (2007–2013) and Lamberto Zannier (2017–2020), agree with this interpretation of the mandate.²⁰⁷ Both also concur that the innovative mandate would most likely not have been possible in today's radically different geopolitical climate as compared to the immediate post-Cold War period. Vollebaek remembers how he urged that the mandate "not be touched" when once asked how it could be strengthened. He emphasizes the responsibility to now protect this unique mandate.²⁰⁸ In the same vein, Christophe Kamp, former Director of the office of the HCNM, also underscores the uniqueness of the mandate and notes that in today's difficult climate "it is very important to keep what we have".²⁰⁹

Thirty years into the mandate, the HCNM has illustrated that not only are political solutions, human rights and conflict prevention reconcilable, but interdependent. A key question of this study is how a mediator succeeds in this

regard. To Professor John Packer, who worked closely with the first two mandate-holders, the answer resides in part in the art of appealing to the “enlightened self-interest of States” while understanding the importance of personalities — a matter of tailoring.²¹⁰ Ambassador Vollebaek concurs with this analysis. As High Commissioner on National Minorities, he often referred to the security implications for States of not including minorities and protecting their rights. “Integrating minorities for a cohesive society and progress is in your interest”, he would say.²¹¹

To this end, Vollebaek would draw on international and regional human rights commitments and obligations of participating OSCE States. Relying on the confidentiality prescribed in the mandate, he could be frank in his recommendations while emphasizing the State’s ownership of such commitments and the consensus-based character of the OSCE. Acknowledging that achieving a cohesive society through rights is a process can also facilitate acceptance, according to Ambassador Vollebaek: “You can say that they are on the road towards reaching their commitments and that it is underway.”²¹² In a similar vein, Ambassador Zannier, recalling also his time as Special Representative of the Secretary-General in Kosovo, notes: “I found human rights aspects in everything I was doing. Then you know the direction in which to go, while ensuring that people’s rights are respected.”²¹³

To be an effective HCNM, Ambassadors Vollebaek and Zannier underline the importance of being a humble and active listener. This underscores a central task and skill of a normative mediator as stressed by Packer: that of interpreting norms against a specific context with a view to finding political solutions — and the ability of conveying them to authorities in understandable and convincing ways which lead to corresponding changes of behaviour²¹⁴ In this regard, Kamp further emphasizes the importance of human rights norms and international standards, in particular the OSCE’s Copenhagen and Moscow Documents and the European Framework Convention on the Protection of National Minorities as the starting point: “These are key

principles in which the HCNM recommendations are rooted. An approach based on international standards drafted and agreed upon by governments is intrinsically good in itself and also avoids the situation of the HCNM being perceived as choosing sides in a particular situation”.²¹⁵ Kamp notes that any High Commissioner on National Minorities, or mediator, needs to be able to fall back on objective criteria to be successful. But they must also look at, and be sensitive to, the broader political context so as to give a normative interpretation of standards that offer meaningful political solutions to specific country or regional situations.

The work of Max van der Stoel in Ukraine in the 1990s will serve to illustrate how this was done concretely. By facilitating dialogue between State authorities and national minorities through quiet diplomacy and with a problem-solving approach, a number of breakthrough decisions were made that played a critical role in preventing violence at the time. As noted by Packer: “The political process followed by the HCNM in encouraging compliance with standards may in fact be more effective than any available legal process”.²¹⁶

The case of Ukraine (1994–2001)²¹⁷

There is broad consensus that the HCNM succeeded in de-escalating tensions and preventing violent conflict in three areas of engagement in Ukraine in the 1990s: (i) Relations between the Russian minority and the Ukrainian majority inside Ukraine; (ii) the status of Crimea within Ukraine; and (iii) the resettlement of Crimean Tatars.²¹⁸ The success has been attributed to van der Stoel's flexible and creative approach to quiet diplomacy, his early action and persistence in pursuing solutions and the fact that he was held in high esteem by all sides, including the Russians, as a trusted third party.

What were the proposals put forward by the HCNM and how were human rights standards and principles used to this end? For delimitation purpose, focus is on the first two areas of engagement. It should be added that throughout his activities and shuttle diplomacy, Max van der Stoel received direct support from a dedicated CSCE Mission in Ukraine²¹⁹ and thematic experts.²²⁰ Of note, the CSCE Mission was mandated, *inter alia*, to report on “the situation of human

rights and rights of persons belonging to national minorities in the Autonomous Republic of Crimea (Ukraine)”.²²¹

On the first issue, tensions between the Government of Ukraine and the Russian minority in respect of the use of the Russian language in schools and other public institutions gradually increased after Ukrainian independence in 1991. As the Government actively pursued a path of nation-building by strengthening the Ukrainian language and culture, the Russian minority – demanding that the Russian language be protected as a constituent, not only minority, language – felt threatened, including as the Ukrainian language became a compulsory subject in Russian schools.²²² The situation escalated and culminated in 2000 with a draft decree which would bring the language of instruction in line with the ethnic composition of the state, drastically reducing the number of Russian language schools. After isolated incidents of violence, Max van der Stoel convened in Odessa a seminar on language and education rights of Ukraine's minorities, followed by visits to several cities across Ukraine. In this context, the 1996 Hague Recommendations on the Educational Rights of Minorities and the 1998 Oslo Recommendations Regarding the Linguistic Rights of National Minorities (elaborated on the initiative of the HCNM), which clarify the content of minorities' rights, played an important role.²²³

While van der Stoel supported the use of Ukrainian as the state language, he recommended that the study of Russian be allowed in Ukrainian schools and that other restrictions on the use of Russian be removed. This balancing between protecting the linguistic rights of the Russian minority while upholding the right of the Ukrainian state to protect and develop its own language and culture is said to have helped reduce tensions. In addition, that fact of Max van der Stoel “embedding recommendations in clearly articulated norms helped him avoid becoming enmeshed in the wider struggle between Russia and Ukraine”.²²⁴

Further to his visit, and upon the HCNM's encouragement, the Government of Ukraine issued a statement repeating its

commitment to implement provisions of the Constitution that guarantees the free development, use and protection of Russian and other languages of national minorities in Ukraine (art. 10) and the right of citizens belonging to national minorities to receive instruction in the native language (art. 53(a)). It also noted that Ukraine will fully implement the provisions of the law of minorities and the Council of Europe's Framework Convention for the Protection of National Minorities by which Ukraine is bound.²²⁵

In parallel, the HCNM engaged in what has been described as “facilitative mediation” or “preventative mediation” in efforts to address the crisis between Kiev and Simferopol over Crimea's status.²²⁶ Specifically, following Kiev's pull out from negotiations and its adoption of a decree placing the Crimean government directly under its control in 1995, the HCNM took the initiative of convening a roundtable in Switzerland, where high-level officials from both sides were able to engage — for the first time — in direct confidential face-to-face discussions. In so doing, he hoped to prevent a deeper crisis, sparked by the abolition in March 1995 by the Ukrainian Parliament of the 1992 Crimean Constitution — which had asserted independence — and the countermeasure by the Parliament of Crimea to announce a referendum on its Constitution. By setting and controlling the agenda of the roundtable, Max van der Stoel was able to “lead the parties into productive dialogue”. Significantly, his recommendations for Crimean autonomy were supported by parliamentary leaders of both sides by means of an agreement that the status of a future Autonomous Republic of Crimea (ARC) be based on a 1992 law of Ukraine.²²⁷ Notably, HCNM effectively brokered a deal by which the Parliament of Crimea agreed not to proceed with its referendum if the Government of Ukraine would not move to dissolve the Crimean Parliament — which it didn't.²²⁸

Drawing on this momentum, the HCNM soon convened the two sides again, this time in the Netherlands, to stave off another brewing crisis relating to the Crimean Constitution. In November 1995, the Crimean authorities

adopted a new draft constitution which — while clearly placing the peninsula under Ukrainian control — included references to Crimean statehood. This implied distinct “sovereignty” or a confederate constitution as a basis for Ukraine itself and suggested the prospect for dissolution of the State — a specter that was not acceptable to Kiev. The draft Constitution also failed to include guaranteed representation to the Crimean Tatar community, which represented 10% of the Crimean population.²²⁹ On this issue of political representation, the HCNM stressed “the importance of a system of proportional representation as a method of giving them [...] the near certainty of having a representation in the ARC Parliament broadly commensurate to their percentage of the total population of Crimea”.²³⁰ Based on bilateral and collective discussions with both parties, Max van der Stoel and his staff forged consensus that the great majority of the constitutional provisions were in fact acceptable, save some twenty provisions. Further to his recommendation that the Ukrainian Government approve the Constitution without delay, except those outstanding provisions, the “Law on the Autonomous Republic of Crimea” was adopted by the Ukrainian Parliament on 4 April 1996 whereby it approved the vast majority of the agreed-upon articles of the Crimean Constitution.²³¹

In this process, van der Stoel “provided the necessary foundation for the ultimate resolution” by offering formulations for concrete text and plans that formed the basis for an agreement.²³² In June 1996, the Constitution of Ukraine was adopted, reconfirming the status of Crimea as an Autonomous Republic. The HCNM influenced the formulation of article 11 of the Ukrainian Constitution, including reference that the States promotes “the development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine” — ‘indigenous peoples’ being an indirect reference to the Crimean Tatars.²³³ The OSCE Mission noted that this Constitution was in line with international standards regarding the protection of human and minority

rights, and the resulting agreement was widely hailed as a result of successful “preventive diplomacy”.²³⁴

Although generally positively disposed to van der Stoel’s recommendations, the Ukrainian Government did not implement all of them, including those related to parental rights to educational choice and the right to appeal local decisions to central authorities. As neither side were satisfied with the proposals, the underlying dispute thus remained less than fully resolved.

In sum, the role played by Max van der Stoel in Ukraine in the 1990s has been identified as that of a “catalyst to productive political dialogue, and through proactive engagement was able to assist the parties to reach a durable constitutional solution to this potentially violent separatist crisis”.²³⁵ The “silent diplomat” represented in van der Stoel and his masterly ability to interpret and relay human rights norms in a politically convincing way to bring about concrete change and protection remains a model for the HCNM and in reasserting itself, to recall Ambassador Vollebaek, as the unique institution it is.

Operationalizing human rights for conflict prevention

HCNM recommendations and guidelines as “blueprints for mediation efforts”

A key tool in helping States operationalizing their human rights obligations into political solutions has been a set of thematic Recommendations and Guidelines issued by successive High Commissioners since 1996. Initiated under Max van der Stoel to give specificity to States’ legal commitments,²³⁶ they offer practical guidance to States on measures to help prevent and address inter-ethnic tensions through protection of human rights, including minority rights. Ambassador Vollebaek notes that they promote consistency in the work of the High Commissioner by issuing public and normative guidance on how the HCNM does their job.²³⁷ Ambassador Zannier refers to them as “blueprints that are followed in all mediation efforts [of the HCNM]”.²³⁸

One important tool during both Vollebaek and Zannier’s terms in office were the 1998 Oslo Recommendations related to linguistic

rights of minorities. Both engaged actively on Ukraine, adopting a similar balancing approach to that of Max van der Stoel. Ambassador Vollebaek issued a study in 2009 on Russian speaking communities in Ukraine which found, much to his concern, that not much had changed since Max van der Stoel's engagement.²³⁹ Later, during a visit to Kiev in 2017, Ambassador Zannier stressed "the need to strike a balance between, on the one hand, preserving and developing the languages of minorities and, on the other, encouraging them to become fluent in the state language — to be fully engaged in public life, feel that they belong and realize their full potential in society".²⁴⁰ It means that successful integration of society and the realization of human rights, including language rights, are key components of conflict prevention.²⁴¹ In this regard, Ambassadors Vollebaek and Zannier underline the international relevance of the Recommendations and Guidelines and have encouraged their application to other regions.

During his time as High Commissioner on National Minorities, Zannier supported a system of joint schools in Bosnia-Herzegovina as part of efforts to break a predominantly segregated school system. In this context, an inspirational educational institution set up to foster social integration of minorities is the South-East European University in the Republic of North Macedonia, established in 2001 at the initiative of Max van der Stoel.²⁴² It is still considered a model for multi-ethnic

and multi-lingual higher education in the region. Building and drawing on the work of his predecessors, Ambassador Zannier also identified the issue of different perceptions of the historical past as a key obstacle to the effective integration of diverse societies. He subsequently started preparation of a possible new set of recommendations in cooperation with a number of universities and research institutes. This work is still ongoing.²⁴³

9 Aceh

“Nothing is
agreed until
everything
is agreed”

It is widely considered²⁴⁴ that the Indonesian Government's caution about "over-internationalizing" the peace process in Aceh following the experience of the United Nations-supervised referendum in East Timor in 1999 contributed to the appeal of involving non-official intermediaries: First through the engagement of the Centre for Humanitarian Dialogue (HDC) and its efforts from 1999 to 2003 to establish two confidence-building ceasefires between the Government and the Free Aceh Movement (GAM)²⁴⁵ and later through the 'private diplomacy' of Martti Ahtisaari, former President of Finland and head of Crisis Management Initiative (CMI) – an independent Finnish organization for conflict prevention and resolution through dialogue and mediation. With years of United Nations and other experience in peacemaking, Ahtisaari brought critical skills and political stature and led the Helsinki process in 2005 that ended the three-decade long conflict in Aceh.

At the heart of the conflict figured issues related to governance and lack of access to resources and power as manifested in poverty, exclusion and absence of meaningful political participation in Aceh, a province and former Sultanate in the northeast corner of Sumatra island.²⁴⁶ Launched in 1976, GAM's insurrection originally demanded a "free and independent Sovereign State" of "Acheh-Sumatra" and a total severing of ties with Jakarta.²⁴⁷ The rebel movement grew in the 1980s, prompting a massive counterinsurgency in 1989 under President Suharto, who turned Aceh into a Military Operations Area for the next decade. Violations by the Indonesian National Armed Forces (TNI) further fueled Achenese resentment and demands for social justice. It would take the ushering in of the Indonesian democratization process in 1999 before a dialogue process facilitated by HDC could start.

While the "Humanitarian Pause" of May 2000 and the Cessation of Hostilities Agreement (CoHA) of 2003 brokered by HDC were important in temporarily reducing violence and setting the scene for the Helsinki talks, they broke down amid mutual recriminations and different interpretations by the parties and, notably, by "the

exclusion of fundamental political disagreements”.²⁴⁸ In particular, HDC director at the time, Martin Griffiths, in hindsight regretted having allowed the parties to resist inclusion of any stipulations on human rights in the CoHA “as the agreement partially derailed due to the lack of future protection of human rights”.²⁴⁹ Griffiths however found that he had few options at the time in light of threats of renewed fighting.²⁵⁰ In May 2003, martial law was again imposed on Aceh and the largest-ever operation of the TNI, involving some 35,000–40,000 troops, was set in motion.²⁵¹ Atrocities committed by the TNI, which had economic interests in Aceh, would continue also during the mediation by Ahtisaari. It is estimated that between 15,000 to 50,000 people were killed and 7,000 tortured throughout the thirty-year long conflict.²⁵²

In 2004, secret outreach efforts to moderate Acehnese and later also to the GAM leadership living in exile in Sweden were initiated by Minister and later Vice-President Jusuf Kalla under President Yudhoyono. This led to the involvement of Ahtisaari through a Finnish businessman, Juha Christensen, who knew one of Kalla’s advisers well.²⁵³ When the tsunami hit Aceh in December 2004, claiming 130,000 lives, the devastating impact served as the final catalyst for a new peace process with a comprehensive political settlement in sight. The formula for the talks as coined by Ahtisaari was “Nothing is agreed until everything is agreed.”²⁵⁴

Towards peace in eight months: The Helsinki talks January–August 2005

In only eight months, the Ahtisaari-led mediation ended the armed conflict with the signing of the Memorandum of Understanding (MOU) by the Government of Indonesia and GAM on 15 August 2005. The weight given to human rights for the prospect of the agreement and its implementation to deliver peace and democratic governance could be discerned in Ahtisaari’s speech at the signing ceremony: “The purpose of the process has been to give a new chance to the people of Aceh to live in a peaceful, just and democratic society. The agreement contains the parties’ firm commitment to the monitoring of human rights in Aceh.”²⁵⁵ He emphasized that the process had been made possible because the two parties had been prepared to seek peaceful, comprehensive and lasting solutions to the conflict. Thus, the mediator seemed to have tied a close knot between the goals of reaching a comprehensive agreement, human rights protection in the implementation phase and achieving sustainable peace.

How was this achieved and how was it made possible in such a short timespan? Several factors were decisive,

from Ahtisaari’s leadership and the format of the process (primarily direct talks) to the impact of the tsunami and the full commitment to a peaceful settlement by the Government and the armed forces.²⁵⁶ Thanks to Ahtisaari’s connections in Brussels, the European Commission approved a grant, tied to the European Union’s (EU) tsunami reconstruction efforts, to CMI for the six months stipulated for the peace process. While tying the talks to aid has been criticized,²⁵⁷ the short timeframe was an opportunity to “focus on the essentials” and also meant that the EU became a stakeholder in the peace process — notably through the unprecedented joint EU/ASEAN Monitoring Mission (AMM) of the MOU.²⁵⁸ Importantly, Ahtisaari also made clear very early on that he wanted to avoid open-ended talks.²⁵⁹

From the start, Ahtisaari steered the talks decisively by clarifying that independence was off the table and that his task was to find an outcome “next best to independence” based on the Government’s offer of ‘special autonomy’.²⁶⁰ Finding a mechanism for internal self-determination for Aceh was thus at stake. To GAM, however, the concept of autonomy “represented [an] abhorrent system of brutal oppression and impunity for murders, rapes, disappearances, massacres and all sorts of other brutalities.”²⁶¹ The introduction by GAM and Ahtisaari of a new terminology — namely “self-government” — rescued the talks from collapse. The principles of what “self-government” would mean in practice were set out in the section on ‘Governing of Aceh’ of the MOU. This section included essential human rights standards and principles, notably political participation (enabling the establishment of local political parties in Aceh) and the rule of law (separation of powers, an independent court system, a new legal code for Aceh based on universal principles of human rights, and that civilian crimes committed by military personnel in Aceh will be tried in civilian courts). The MOU stipulated that a Law on Governing Aceh be passed and entered into force no later than 31 March 2006.

Ahtisaari’s visit to Jakarta and human rights — the past, the present and the future

It has been said that human rights were not on the forefront of the talks or very visible on the agenda.²⁶² Both parties had “varying levels of anxiety about committing themselves to robust justice measures”,²⁶³ and the closed format and short timeframe of the talks also raised concerns among civil society actors that human rights would not be prioritized. The Finnish chapter of Amnesty International met with CMI during the talks to emphasize ongoing atrocities and the need for a human rights court. A participant of the meeting recalls that it provided little indication on the mediator’s efforts to advance the inclusion of human rights issues in the talks.²⁶⁴ This may have been due to the fact that neither Ahtisaari, or GAM, had human rights experts or advisers in their respective teams, but also because GAM negotiators are said to have ceased to pay much attention to justice issues as the talks progressed.²⁶⁵

Despite this context, Ahtisaari was the one to introduce and encourage the parties to address human rights.²⁶⁶ Already on the first day of the talks in January 2005, it was agreed that “somehow, the ghastly human rights past

— and present — that loomed over the talks would have to be addressed”.²⁶⁷ The other main issues concerned the political status of Aceh, the formation of political parties, disarmament, allocation of natural resources ownership and withdrawal of the TNI. Sebenius and Green refer to an “electrified atmosphere” as human rights came up for discussion: The Government emphasized that it was not in the interest of the negotiations to dig in deeply into the past, only to be reproached by GAM minister Nurdil Abdhul Rahman who had been tortured by the TNI and imprisoned for 12 years.²⁶⁸ The mediator’s reactions have been captured as follows:

“Basically my answer to those who spoke and showed their scars and the tragic events that they had experienced, was to say that we cannot undo those things that have happened. Why we are sitting here is that such things should never happen again in Aceh.” Rahman pleaded that the issue needed resolution before the sides could continue, but Ahtisaari responded: “Look at South Africa. I have never met a person other than Nelson Mandela who had not a trace of bitterness.”²⁶⁹

This may come across as Ahtisaari favouring a predominantly forward-looking approach to human rights, something that is confirmed by Meeri-Maria Jaarva who worked closely with Ahtisaari during the talks.²⁷⁰ “The idea was always to create the conditions for the future, that with the MOU the violations would not continue”.²⁷¹ Yet, it was Ahtisaari who proposed to include — at the very end of the negotiations — the points on the Truth and Reconciliation Commission (TRC) and a Human Rights Court in Aceh —

both would be included as the two central pillars of the human rights chapter in the MOU.²⁷²

Human rights violations by the TNI in Aceh continued and came to impact the second and third rounds of talks in Helsinki. After Ahtisaari received reports on ongoing torture, disappearances, executions and rapes in Aceh, he asked GAM to draw up a report on the most recent violations and put GAM on oath that every single detail was correct.²⁷³ Staying true to his words that such acts must never happen again, Ahtisaari and his team travelled to Jakarta on 16 May 2005 and presented the report to the President, the Vice-President, members of Parliament, the armed forces and political parties. “I wanted to tell them that if these negotiations failed, at least they knew the reason.” Ahtisaari also told Vice-President Kalla that “if they continued the way they did, peace would come to nothing” and that he had given the report to representatives of other states.²⁷⁴ The pressure seemed to work: Reports of abuses decreased, and the state of emergency in Aceh was lifted — while the issue of how to deal with the past remained unanswered.

The visit sent a clear signal by the mediator that atrocities committed by the armed forces were unacceptable. He needed assurances, from the top leadership, that such violations would cease during and after the peace talks.²⁷⁵ Ahtisaari requested the President and Vice-President to remove problematic TNI units, to have the TNI cease denying allegations of human rights abuses and to make overtures to secure the confidence of GAM negotiators. His demarche proved that confronting and addressing violations head on during a peace process is not only possible but can be necessary for a successful outcome in the short and long-term. Meeri-Maria Jaarva recalls that upon Ahtisaari’s return to Finland, the parties entered into a very important negotiation round, “something that may not have happened without the visit”.²⁷⁶

There is little doubt that Ahtisaari’s communication skills and style played a role in the successful mission.

*Ahtisaari had not come wagging his finger to say to the generals, what on earth are you doing? His way is to present the problem — the peace process is in danger of failing — and gather everyone together to think about how [we] can solve the problem together, even though the generals themselves were without doubt part of the problem.*²⁷⁷

On this issue, Ahtisaari has said that the biggest compliment ever given to him was someone telling him: “I would like to work half a year with you to learn how to say difficult things in a nice manner”.²⁷⁸ As put elsewhere, the ability to say disagreeable things without causing offense has become a kind of “Ahtisaari’s trademark” throughout the years.²⁷⁹ A normative mediator should be able to raise difficult human rights issues, and with the political skills and judgement to determine how to best do so in the most impactful way. In so doing, to be comprehensive, it is important for the mediator to look both backwards and forwards at the same time.

The brief but general human rights provisions in the MOU may have been aimed at achieving exactly at that:²⁸⁰

2. Human Rights

2.1 GoI will adhere to the United Nations International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.

2.2 A Human Rights Court will be established for Aceh.

2.3 A Commission for Truth and Reconciliation will be established for Aceh by the Indonesian Commission of Truth and Reconciliation with the task of formulating and determining reconciliation measures.

Details were left out and the provisions have been criticized for being too vague.²⁸¹ This criticism reflect the observation that “various people involved in the process indicated that negotiations on human rights would be conducted with a spirit of ‘looking to the future’ and indeed the negotiations almost collapsed over the principle of retroactive prosecution”.²⁸² Others point to the fact that their broad formulation was in fact an asset and made an agreement possible.²⁸³ Acehnese and other human rights activists welcomed these and other key human rights provisions of the MOU. Implementation would prove the real challenge.

Implementation — the harder part

While Ahtisaari signed the MOU as a ‘witness’, the monitoring of its implementation was assigned to the unprecedented EU/ASEAN Aceh Monitoring Mission (AMM). The AMM is widely hailed a success, especially in regard to the monitoring of effective implementation of the MOU’s security related and amnesty provisions, enabling fighting to cease in Aceh. However, implementation of the political aspects proceeded at much slower pace, notably the passing of the Law on Governing Aceh, the establishment of the Human Rights Court and the Truth and Reconciliation Commission, and the human rights situation and assistance in this field.²⁸⁴

When the AMM left Aceh in December 2006, neither the Commission nor the Court had been established. The Truth and Reconciliation Commission was created only in 2016, with its jurisdiction limited to events occurring post-2005. The Court is yet to be established. Kirsten Schulze identifies four reasons for the AMM’s weak role in the field of human rights: (1) Pushing too hard on human rights risked the mission as a whole; (2) the AMM had no sanctioning power; (3) its mandate covered only GAM or the TNI; and (4) the AMM leadership was

reluctant to push on human rights. One AMM official acknowledged that “human rights is not well coordinated or competently represented. The concept is non-existent, there are no policies and the area is weak, confused and aimless.”²⁸⁵ According to Schulze, the EU provided neither guidance nor political backing for a more assertive AMM approach. This justifies the question: What was, and remains, the responsibility of the EU in ensuring follow-up of and progress in the implementation of the human rights provisions of the MOU? The question is given renewed importance in light of the priority accorded to human rights in the EU’s Peace Mediation Concept and Guidelines of 2020.²⁸⁶

A representative of Aceh observes that after the AMM left, business as usual resumed. “Now the Government thinks that the MOU is a matter of the past. For Indonesia, the MOU doesn’t mean anything, but for us it is the center of everything.”²⁸⁷ This representative believes an independent United Nations human rights investigation, or joint United Nations-Indonesian investigation, would have been desirable: something which had been proposed by GAM but was rejected by the Government. Ahtisaari has acknowledged that key to the implementation of the MOU was that “the government and GAM should do what they have promised to do”.²⁸⁸ He also believed that the AMM concluded too early. GAM has thus had to turn to CMI over the years to seek guidance about challenges in implementation. A non-governmental

organization only has so much leverage in ensuring compliance with a peace agreement – especially in a country as powerful, regionally and internationally, as that of Indonesia.

Although the implementation of the MOU's key human rights provisions has been slow, human rights actors have welcomed the establishment of the Truth and Reconciliation Commission. "If we don't start with something, nothing will happen."²⁸⁹ Since 2017, thousands of victims have been interviewed and the Commission has started hearings, and an agreement on protection and reparation effort for victims of past human rights violations in Aceh has been signed with the Indonesian authorities.²⁹⁰

10 The political crisis in Guinea 2008–10

ECOWAS and normative mediation in Africa

The 2017 ECOWAS Mediation Guidelines represent an interesting example of how the Economic Community of West African States (ECOWAS) has transformed from a regional organization concerned primarily with economic integration among its 15 member states in 1975 to one engaged in preventive diplomacy, peace-making and mediation. In this role, human rights, rule of law and democratic governance are foundational values and operative objectives. These commitments take direct expression in the Mediation Guidelines which stipulate that the work of ECOWAS mediator “is grounded on the principles and norms defined in the UN and AU Charters, the UDHR and the African Charter on Human and Peoples’ Rights”.²⁹¹

Of particular interest to this study, the Guidelines go further by emphasizing that the ECOWAS Mediator “must also abide [by] and promote” these norms and legal instruments. Specifically, the Mediator “must contribute to the promotion and consolidation of democratic governments and institutions, good governance and the rule of law, the protection of fundamental human rights and freedoms and the rule of international humanitarian law”.²⁹² Developed by the ECOWAS Mediation Facilitation Division and the Crisis Management Initiative of Finland as “systematic principles for mediators to guarantee more success in achieving peaceful resolution”²⁹³, they represent the most ‘proactive’ human rights mandate for mediators that this study has identified.

While concern has been expressed that ECOWAS may have lost its primacy as Africa’s most important conflict resolution mechanism in recent years,²⁹⁴ the relevance of these Guidelines, and the instruments they rely on, should not be underestimated. Most importantly, the 1999 Protocol on the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security and its 2001 Supplementary Protocol on Democracy and Good Governance stand out as key markers of ECOWAS’ transformation. They establish a clear link between the objectives of conflict prevention and resolution and

political principles, such as rejection of unconstitutional change of government and the possibility to intervene in case of serious violations of human rights.²⁹⁵ At a time when the counter-terrorism paradigm tends to dominate regional politics and, concomitantly, human rights risk being compromised, these commitments gain further importance.²⁹⁶

A case pointed to as “extremely important to mediation” in the context of this study is the ECOWAS-led engagement to resolve the 2008–2010 crisis in Guinea.²⁹⁷ In this case, human rights activities, analysis, mechanisms and political leadership on human rights by the United Nations proved essential in defusing tension and violence as an integral part of the collaborative international mediation effort by ECOWAS, the African Union (AU) and the United Nations:

The Guinea case is a clear example where the targeted use of justice tools — the International Commission of Inquiry, the ICC and bilateral sanctions linked to human rights violations — did not appear to negatively impact the UN’s access or standing with the parties. On the contrary, there is compelling argument that bold justice approaches helped, gave leverage to the mediation, and assured the opposition parties that their concerns would be addressed.²⁹⁸

The importance of early human rights engagement and United Nations leadership

When Guinea fell victim to a coup d’état on 23 December 2008, a few hours after the passing of President Lansana Conté, it was considered an island of relative peace in West Africa’s Mano River basin, surrounded by civil wars in Liberia and Sierra Leone. However, after 50 years of authoritarian rule, it was a deeply impoverished state — despite its natural riches — marked by deep inequalities, ethnic tensions, widespread corruption and restrictions on civil and political rights. 2007 had seen violent repression of demonstrations caused by popular resentment. A joint United Nations-ECOWAS mission in July 2008, led by the SRSG and head of the United Nations Office for West Africa (UNOWA), Said Djinnit, and the President of ECOWAS Commission, Mohammad Ibn Chambas, found signs to justify concerns that Guinea was drifting closer to civil war.²⁹⁹

At the outset of the coup, and seizure of power by a junta called National Council for Democracy and Development (CNDD) led by Captain Dadis Camara, there was thus already close engagement between the UN and ECOWAS.

Mahamane Cissé-Gouro, then head of OHCHR's Regional Office in Dakar, recalls that a few hours after the coup, he was invited by SRSJ Djinnit to discuss the human rights measures to prioritize. He was subsequently asked by OHCHR to join a mission led by Haile Menkerios, ASG for Political Affairs, to discuss the situation with ECOWAS in Abuja. Cissé-Gouro later travelled to Guinea and Burkina Faso with SRSJ Djinnit. In this regard, Cissé-Gouro emphasizes the importance of human rights engagement at the initial phase of, and throughout, mediation efforts and that leadership is key for human rights to have an impact.³⁰⁰ The close relationship between Djinnit, who could leverage the right networks due also to his role as former AU Commissioner for Peace and Security, and Dr. Chambas, with his granular grasp of the regional dynamics and access to authorities, has also been identified as critical for the partnership between UNOWA and ECOWAS and their effective collaboration with the AU.

SRSJ Djinnit realized early on that human rights were “key to the performance” of his mandate and requested that a Senior Human Rights Adviser be part of his team in UNOWA. “It was clear to me that human rights were at the beginning and the end of any political conflict; an essential component to address and to prevent conflict”.³⁰¹ OHCHR and UNOWA had already deployed together in Guinea in 2008 prior to the coup. At SRSJ Djinnit's encouragement and request, OHCHR deployed to the country to, *inter alia*, train civil society on human rights monitoring and reporting.³⁰² The same civil society representatives would later work closely with the Commission of Inquiry established by the Secretary-General in the wake of the 2009 September massacre. OHCHR also supported the National Commission of Inquiry into human rights violations committed in 2007 and deployed a Human Rights Adviser to the UNCT in 2008.³⁰³

Shortly after the coup, Camara dissolved the government, suspended the Constitution and suppressed any opposition activity. Guinea was suspended from the AU and ECOWAS, and, at their initiative, an International Contact Group on

Guinea (ICG-G) was established in January 2009, with active participation from the United Nations, to help facilitate a transition to democratic rule. The ICG-G was co-chaired by Dr. Chambas from ECOWAS and the AU's Special Envoy for Guinea, Ibrahima Fall, and successfully succeeded in gaining a commitment by Camara to hold early elections and not to run himself. Olakounlé Yabi notes that it was ECOWAS and the AU (in that order) that “propelled the ICG-G and the consistent diplomatic action to put pressure on the military junta to agree to give priority to elections as soon as possible, [...] not to thwart the activities of political parties, civil society and to protect human rights.”³⁰⁴

Despite the concerted international engagement — no doubt prompted by the economic and strategic importance of Guinea — Camara publicly announced his intention to stand for election in August as political tensions and violence increased. It culminated on 28 September 2009 in a stadium in Conakry as elements of the armed forces opened fire on and killed scores of peacefully demonstrating opposition supporters, and committed other serious human rights violations, including hundreds of cases of rape and torture.³⁰⁵

The 28 September massacre and the International Commission of Inquiry: turn in the mediation

This the most tragic moment of the 2008–10 crisis triggered a “step-change” in regional and international efforts to resolve the Guinean political crisis.³⁰⁶ Notably, the next day, ECOWAS called for the establishment of an International Commission of Inquiry (COI) in collaboration with the AU and the United Nations.³⁰⁷ A few days later, the AU (Special Envoy Fall), ECOWAS (Dr. Chambas) and the United Nations (SRSG Djinnit) met with President Blaise Compaoré of Burkina Faso — who was designated ECOWAS mediator — and jointly devised a strategy to bring the two parties, CNDD and the Forces Vives,³⁰⁸ back into mediation. This troika “became the core mediation group.”³⁰⁹ In parallel, the AU imposed targeted sanctions on Camara and his close allies as punitive measures. ECOWAS, the EU and the US would do the same against individuals presumed to be responsible for the events of 28 September.

On 28 October 2009, Secretary-General Ban Ki-moon informed the Security Council of his decision to establish an International COI to investigate the violence of 28 September, in cooperation with the AU and with the

support of OHCHR, following the request by ECOWAS and the ICG-G.³¹⁰ Djinnit recalls mustering all pressure to bear on Camara in order for him to accept the COI; Camara’s position weakened gradually after the massacre, which was an embarrassment to him.³¹¹ In this act of human rights persuasion and the role of human rights in mediation more broadly, Djinnit notes that impact depends how you say it, “as politely as you can, but firmly”, and “where you’re coming from”. “Human rights are an African quest”, he underscores, adding that “the struggle for independence is a struggle for human rights”.³¹² It has also been reported that Camara agreed to its establishment by a mistaken understanding that he himself could face the ICC if he did not agree to the COI³¹³ — which ironically found *prima facie* evidence that Camara held individual criminal liability and command responsibility for the events and recommended his referral to the Court. Two months later, the Commission finalized its report, concluding that there was strong presumption that crimes against humanity had been committed.³¹⁴

ECOWAS Mediator Compaoré initiated consultations in early November 2009 with representatives of the Forces Vives and CNDD, in the presence of AU and United Nations representatives. Aside from the withdrawal of CNDD and Camara from future elections, meaningful investigations and accountability for the 28 September events were among the key demands of the Forces Vives. The establishment of the COI “thus met an important need for the group and appeared to give it a sense that they could rely upon the international community for support.”³¹⁵ Pichler Fong and Day conclude that the combined effort of the COI, the sanctions and international engagement offered the junta “a path away from further violence while reassuring both sides that the mediation process would address their core needs. Without this, it is highly likely that the violence would have spread and intensified [...]”³¹⁶

The prospect of possible ICC prosecution led to significant tensions among the CNDD leadership. In this context, Camara narrowly escaped an assassination attempt by his

bodyguard Aboubakar “Toumba” Diakite who accused the President of directing main responsibility of the September massacre towards him. Evacuated for treatment, Camara’s temporary absence from the scene proved advantageous to the mediation effort as his replacement, General Sékouba Konaté, proved more open to dialogue and compromise. In this context, the COI “proved crucial in dividing and weakening the CNDD [...]. The inquiry responded to popular outrage over atrocities, and was a necessary measure to signal international condemnation and intolerance of such acts. It also represented a positive instance of collaboration between the OHCHR, UNOWA, UNDP, and the Forces Vives.”³¹⁷

On 15 January 2010, Compaoré succeeded in his mediation efforts as President Camara and Konaté signed the Ouagadougou Joint Declaration which made Konaté interim President, allowed for the appointment of a new Prime Minister by the Forces Vives, established a National Transitional Council and the organization of presidential elections within six months.³¹⁸ SRSG Djinnit played an instrumental role in convincing Camara to sign the Declaration and pushed hard for the parties to agree to the shortest transitional period possible (six months).³¹⁹ Respect for public liberties, including freedom of the press and opinion, were among the twelve measures decided on in the Joint Declaration “in order to achieve a peaceful transition”. After two rounds of elections, opposition leader Alpha Condé was declared, although not without dispute, winner in November 2010 and constitutional order had been restored.

Complementing and reinforcing meditation efforts — towards longer-term change

There is broad agreement that Guinea showed that human rights and justice efforts can “complement and reinforce, rather than contradict, mediation efforts”.³²⁰ Similar to the Commissions of Inquiry set up in Kenya (2007–11) and Kyrgyzstan (2020–11), the COI Guinea not only reassured the public’s demands and expectations that justice would be pursued, but “facilitated the mediation process by ‘bracketing’ the heated controversies over these disputed events, removing them from the purview of immediate negotiations, and entrusting them to a body that would offer a more impartial and reliable account”.³²¹

It should also be recalled that, as recommended by the COI,³²² an OHCHR Country Office in Guinea was established in 2010. With a comprehensive mandate of technical cooperation, monitoring and protection functions, its initial areas of activities included technical support in the establishment of a national human rights institution, a Truth and Reconciliation Commission, security sector reform, administration of justice and engagement with human rights mechanisms.³²³ This broad mandate remains

today, comprising capacity-building of civil society actors on participation in public affairs, including in the context of elections.³²⁴

OHCHR has thus continued to closely monitor the situation in Guinea since the 2010 Ougadougou commitments, including during the renewed tension and violence in early 2013 related to the delay in and dispute concerning the holding of legislative elections.³²⁵ As demanded by the opposition and at the request of President Condé, the United Nations facilitated — under the leadership of SRSG Said Djinnit, backed by ECOWAS and the AU³²⁶ — the Inter-Guinean Dialogue which concluded successfully with the “3 July Agreement” that established conditions for the organization of the legislative elections. Held on 28 September 2013, they marked the end of the transition that had begun with the 2010 presidential elections. In the book on his engagement as Facilitator, *Le Dialogue à Tout Prix*, Djinnit emphasizes a quality for a mediator which has surfaced time and again in this research — humility.³²⁷

*You cannot be a mediator if you are not humble. Humble vis-a-vis the suffering of the people, the history of a nation, and the relevance of the parties — both sides have arguments.*³²⁸

As Facilitator, and throughout his career at the United Nations and the AU, Djinnit pushed for action against impunity as a cornerstone for reconciliation and social cohesion. In the case of Guinea, Djinnit and another United Nations official closely engaged on the file note that impunity was never addressed or resolved by successive governments. The 2009 massacre in Conakry remains unresolved. As of the time of writing, none of the individuals identified in the 2010 COI report has

been brought to justice. Ironically, the junta that in 2021 overthrew the Government of Alpha Condé — who was re-elected for a third time in 2020 after a highly controversial referendum that allowed him to extend his tenure beyond the constitutionally-mandated term limit — requested the United Nations for support to hold trials of alleged perpetrators of these and other serious human rights violations in the country,³²⁹ but later developed cold feet.³³⁰

As exemplified in the case of Guinea, an important and excellent partnership between OHCHR, UNOWAS and ECOWAS has consolidated over the years in West Africa. Other recent examples are the (unprecedented) joint AU-ECOWAS-OHCHR-UNOWAS high-level delegation to The Gambia prior to the elections in December 2016 to advocate for human rights protection during that electoral process as well as the integration of human rights indicators in the ECOWAS Early Warning and Response Network (ECOWARN).³³¹ Since SRSG Djinnit’s decision in 2008 to have a human rights expert in his team, a Senior Human Rights Advisor remains embedded in UNOWAS today. UNOWAS³³² is one of the Special Political Missions with the most explicit human rights mandate in the field of prevention and peace-making.³³³

In this context, UNOWAS continues to liaise closely with ECOWAS’ mediation efforts in West Africa to enhance information exchange in a number of areas, including human rights. There is scope for more targeted support and capacity-building³³⁴ from UNOWAS and OHCHR to assist ECOWAS in effectively implementing the 2017 Mediation Guidelines, which remains a source of inspiration for stronger norms-based mediation across the continent. The operationalization of enablers, such as the ECOWAS Conflict Prevention Framework and the Mediation Guidelines, is critical for the implementation of ECOWAS foundational documents and for the regional economic community to move from an “ECOWAS of Member States” to the intended “ECOWAS of the People”.³³⁵ This is particularly critical as mediation engagements are increasingly, as was also the case in Guinea, undertaken by Heads of State of participating Member States.

The case of Kenya 2008: mediation in the aftermath of post-electoral violence

Guinea illustrates the importance of independent human rights investigations that bring credible and impartial information concerning events on the ground to a mediation effort. Kenya represents a similar situation. OHCHR deployed a Fact-Finding Mission to the country from 6 to 28 February 2008 to look into the violence and allegations of grave human rights violations following the presidential elections in December 2007.³³⁶

On 10 January, the parties to the dispute — the governing Party of National Unity (sitting President Kibaki) and the Orange Democratic Movement (opposition leader Odinga) — had agreed to the appointment of Kofi Annan to chair the AU Panel of Eminent African Personalities (the Panel).³³⁷ The Panel quickly forged consensus with the parties on the key objective of the mediation, namely: “to achieve sustainable peace, stability and justice in Kenya through the rule of law and respect for human rights”.³³⁸ This objective

was included in the modalities document and remained a point of reference throughout the mediation process.

The OHCHR Fact-Finding Mission visited districts and localities that were most affected by the post- electoral violence, which had claimed more than 1,200 lives, and interviewed 188 victims and witnesses.³³⁹ It met with members of the Panel during the mediation, and shared information on the human rights situation. “You bring credibility of claims. Then it is up to the mediator how to use the information”.³⁴⁰ This was particularly important when parties would come with different stories of events and as violence continued during the negotiations. The Panel’s own meetings with civil society organization would also prove an immense contribution to the mediation process.³⁴¹ It should also be noted that one of the Panel’s first activities was a first-hand visit to the Rift Valley to meet with victims.³⁴²

An Agreement on the Principles of Partnership of the Coalition Government was signed on 28 February 2008, and the mediation — or the Kenya National Dialogue and Reconciliation (KNDR) — officially concluded on 28 July 2008. It had then completed consideration of all four agenda items of the KNDR.³⁴³ Among its many achievements, KNDR agreed on the establishment of a Commission of Inquiry into the Post-Election Violence (CIPEV) as well as a Truth, Justice and Reconciliation Commission.

11 Colombia

A peace
process
owned by
the parties
with victims
at the center

The Colombian peace process from 2012 to 2016, which marked the end of the longest armed conflict in the Western hemisphere, was guided by one central premise: “for Colombians, by Colombians”.³⁴⁴ The case thus stands out in this study as a peace process excluding external mediators, although the international community – especially Cuba and Norway as “guarantor countries” and the United Nations – played a critical role in supporting the process in various ways. In terms of human rights in mediation, one expert suggests that this is most meaningful when it happens through the conflict parties themselves and singles out Colombia as the epitome.³⁴⁵ Jonathan Powell, a key adviser to the Colombian Government during the peace process with extensive experience in mediation world-wide, similarly identifies Colombia as a good model in this regard.³⁴⁶ Human rights norms were at the “center of the conversations” of the peace process, which has been identified as “the first scenario in which an attempt to achieve a negotiated peace has been made under the dense system of international human rights norms and institutions”.³⁴⁷

This should be considered against the context of Colombia as a state with long-standing democratic traditions³⁴⁸ and a vibrant civil society where human rights, despite many serious violations documented by OHCHR over the years, are considered a “widely accepted social norm”.³⁴⁹ To replicate the successful peace process between the Government of Colombia and the former guerilla group Fuerzas Armadas Revolucionarias de Colombia-Ejército Popular (FARC-EP) to other mediation settings is thus not entirely straight-forward. Colombia is nevertheless invaluable as a precedent-setter, particularly regarding the centrality of victims’ rights and transitional justice.

At the outset: human rights of victims at the heart of the peace process

Negotiations between the Government and FARC-EP officially began in August 2012 when the two parties presented the General Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace (‘the Framework Agreement’). It deliberately set out a short concise six-point agenda with one limited objective: to end the conflict. However, by applying the principle of ‘nothing is agreed until everything is agreed’ (see chapter on Aceh) and by addressing both causes (such as land reform and political participation) and effects (victims’ rights) of the conflict, it was understood that the final peace agreement would be a comprehensive package.³⁵⁰ Reflecting the centrality of victims’ rights in the process, agenda item 5 in the Framework Agreement spelled out that:

Compensating the victims is at the heart of the agreement between the National Government and FARC-EP. In this respect, the following will be addressed:

- (1) Human rights of the victims.*
- (2) Truth.*

This formulation was considered both key and wise — broad enough to encompass critical issues related to justice without committing the parties to a specific outcome.³⁵¹ It is important to stress that the decision regarding the centrality of victims in the peace process had in fact been taken one year earlier, shortly after the decision of the Colombian Government to initiate talks. Jonathan Powell recalls that Sergio Jaramillo, Colombia’s High Commissioner for Peace, pushed for the inclusion of victims on the agenda and their active participation when informally planning the process at the outset in 2011.³⁵²

Reflective of the importance that the process be seen as a Colombian-owned process, there were no references to international or regional instruments or commitments in the Framework Agreement, while its preamble underlines that “respect of human rights within the entire national territory is a purpose of the State that should be promoted”.³⁵³ In this regard, it should be emphasized that the peace process also aimed at structural transformation in regard to the enjoyment of economic, social and cultural rights of people living in conflict-affected areas, including land rights, so as to ensure greater equality between rural and urban areas in the future.³⁵⁴ Overall, the agenda is considered to have struck the right balance of being both forward- and backward-looking, with an emphasis on the former.

The peace talks were initiated shortly after the election in August 2010 of a new President, Juan Manuel Santos

Calderón, who had underscored his commitment to human rights and to ending impunity. This included embarking on the world's most ambitious programme to provide reparations for victims under the 2011 Law on Victims and Land Restitution.³⁵⁵ The latter was important in that the Government for the first time acknowledged the existence of an armed conflict, something that former President Uribe had refused to do so, describing the violence as acts by illegal “narco-terrorist” groups.³⁵⁶ In addition to this new political dispensation and existence of a mutually hurting stalemate in the conflict, extrajudicial killings — the “falsos positivos” — by the armed forces, which gravely hurt their legitimacy, is said to also have played a role in facilitating the start of negotiations.³⁵⁷

Together with the instrumental role played by civil society organizations in mobilizing public opinion, the advocacy by OHCHR Country Office on the falsos positivos had contributed to pressure on the authorities to act.³⁵⁸ The Office had welcomed the drastic reduction of such cases in 2010 and President Santos' sanctioning of a new Military Criminal Code which confirmed that human rights and international humanitarian law violations were not service-related acts and thus to be prosecuted in the ordinary justice system.³⁵⁹ In this context, and as confidential talks on the peace agenda were underway, the High Commissioner's Colombia report of 2011 called on the Government to “prioritize the rights of victims and increase efforts to find ways to achieve lasting and sustainable peace through dialogue and negotiation”.³⁶⁰

The United Nations and OHCHR in Colombia

At the time of the talks, OHCHR was operating its largest field presence in Colombia with a mandate to observe, provide advice and technical cooperation and promote human rights. Like today, it reported on the human rights record by all actors, including through a network of several sub-offices. Christian Salazar Volkmann, Representative of OHCHR Colombia Office from 2009 to 2011, notes that OHCHR's monitoring serves “as a factual baseline for negotiation and action, as fact-based reporting on human rights violations provides a credible and widely-recognized baseline for all actors involved in the conflict and in the negotiations to end it.”³⁶¹ Applied to a more global context, addressing human rights in peace processes creates “a consciousness among all actors” in peace negotiations, says Salazar Volkmann, and fosters a common collective interest to contribute to sustainable peace by addressing human rights violations of the past and present whilst at the same time agreeing on measures to prevent future atrocities.³⁶²

OHCHR's presence and activities across the country over the years contributed to the fact that it was well known by

the Colombian society, and, conversely, to a comprehensive understanding among OHCHR Colombia staff of local and national dynamics and of the key actors of the armed conflict.³⁶³ Todd Howland, Representative of the Colombia Office from 2012 to 2018, underscores that the point of departure for any peace process must be the people affected and a good understanding of the actors involved.³⁶⁴ He recalls how the social movements in Colombia saw human rights “as a roadmap on how to create sustainable peace”.³⁶⁵ Howland travelled frequently to Havana to brief and hold informal discussions with the parties, ensuring an important role for OHCHR throughout the talks. OHCHR also provided inputs to the content of the final agreement and was considered a useful partner to both the Government and FARC.³⁶⁶

In this context, OHCHR was part of a larger United Nations presence with over 2,000 staff at the time of the talks and which played an important role in preserving the space for Colombians who wanted a negotiated peace.³⁶⁷ The United Nations, through the Resident Coordinator’s Office and the United Nations Development Programme (UNDP), played a key role in facilitating regional consultations for civil society during the peace process. The outcome of these consultations — one for each agenda item of the talks — were presented formally in Havana by the Resident Coordinator, Fabrizio Hochschild.³⁶⁸ Hochschild emphasizes that this process — which ensured that the people’s voices and views were presented to the parties in an otherwise very closed process — automatically allowed human rights issues to be included in the peace talks. According to Hochschild, these popular consultations and the participation of victims are two central human rights elements in the Colombian peace talks that serve as important lessons learned and practices for the future peace process.³⁶⁹

Direct participation of victims in peace negotiations — an unprecedented first

In June 2014, the parties embarked on the highly contentious agenda item on victims and truth. As a framework for discussion, the Government and FARC issued a Declaration of Principles and 10-point plan outlining their commitments to victims’ rights to truth, justice, reparation and non-repetition. Importantly, both sides acknowledged “that peace could only be achieved based on the recognition of past human rights violations, on efforts to restore the rights of victims and on the participation of victims in the peace process”.³⁷⁰ Both also acknowledged their responsibility in human rights abuses and violations.

Three mechanisms for victims’ participation were identified.³⁷¹ Most significantly, victims of the conflict were invited to Havana to give direct testimony to the negotiating parties — something which had never occurred before in other peace processes.³⁷² While both parties had agreed on the criteria for selecting the victims, it was a highly contentious process that almost derailed the peace talks. The conflict had resulted in more than 200,000 deaths, thousands of forced disappearances and the displacement

of close to 7 million people, leaving over 8 million victims, the overwhelming majority of whom (80%) were civilian non-combatants. Their inclusion in both process and substance was thus as necessary as it was innovative, for peace to be legitimate and sustainable. Ensuring diversity and regional representation of victims was also paramount. The process involved prior consultations with victims' groups, organized by the United Nations further to a request by Congress, and which was approved by the Government.³⁷³ The Catholic Church, Universidad Nacional de Colombia and the United Nations, including OHCHR, were ultimately chosen to lead the selection of victims to travel to Havana in 2014. In total, 60 victims — in five different groups — met with the parties in Cuba.

Held in camera, the meetings allowed for very frank, honest and emotional testimonies by the victims and are considered to have played a “watershed moment” in the peace process.³⁷⁴ The visits have also been credited for the radical change in FARC's position on victims, culminating in the apology to the Colombian people by FARC leader Timoleón Jiménez at the signing of the final peace agreement.³⁷⁵ The victims' presentations in Havana are also broadly believed to have had a direct effect on the final agreement's focus on victims' rights and reparations.³⁷⁶ In December 2015, OHCHR and the Catholic Church also facilitated a visit by seven FARC leaders from Havana to Bojayá to make a public apology in front of some 700 inhabitants for its role in the killing of 80 people sheltering in a church, the 2002 Bojayá massacre.

The Colombian peace process highlights, to paraphrase Easterday, that a ‘just’ peace does not merely involve negotiation of ‘justice’ between the parties — it requires an inclusive peace process that embraces the voices and views of victims of the conflict.³⁷⁷ Delegations of women's groups and lesbian, gay, bisexual, transgender or intersex (LGBTI) representatives would also meet directly with the parties in Havana, organized by UN-Women and the Sub-Commission on Gender, which ensured that a gendered perspective permeated all aspects of the final agreement. This Sub-Commission has been hailed “an innovation with few global precedents”.³⁷⁸

Finding the transitional justice formula — another precedent and the role of the guarantors

While the peace process was led by Colombians, it was decided early on that Cuba and Norway would act as “guarantor states”³⁷⁹ given their standing and engagement in previous peace efforts.³⁸⁰ As observers, they brought formality into the talks by which the two sides felt more inclined to adopt conciliatory language and thus served as a “sounding board” — a kind of “facilitation”.³⁸¹ In this capacity, Norway played an important role in advancing transitional justice aspects. To Norway, this was particularly important as a State party to the Rome Statute and which it would leverage during the talks. First, by bringing legal and technical knowledge to the process and, second, by helping the parties reach the right conclusions. “We had a particular focus on the ICC and transitional justice as Norway had a responsibility as a State party to the Rome Statute. Human rights were a very important element for Norway and our role in Havana”, says Dag Nylander, Norway's Special Envoy to the Colombian peace process from 2010 to 2016.³⁸²

In early 2014, Norway convened the first mechanism to move forward the discussion on transitional justice. This was an informal group of experts – the so called “New York group”³⁸³ – which met confidentially to brainstorm on solutions to the difficult legal and technical questions facing the parties. Some individual papers were shared informally with the parties while members also provided expert feedback on specific proposals being negotiated. Notably, this group is credited for the idea of the Special Tribunal for Peace, a pillar of Colombia’s transitional justice model, and for persuading FARC on the need for a serious and legally credible response to serious crimes committed without which “the whole process could fail”.³⁸⁴

The work of the New York group is said to have influenced the decision of President Santos to establish the formal Commission on Justice set up in July 2015 to avoid a potential impasse on the issue and to marshal political support for the issues discussed.³⁸⁵ While formally separated, channels with the New York group provided an opportunity for the parties to communicate on the most sensitive issues.³⁸⁶ Based on the proposal by this Commission, the parties in September 2015 announced the agreement on a Special Jurisdiction for Peace (SJP), followed by an agreement on 15 December 2015 on victims. Ultimately, in the final peace agreement, the (i) SJP, (ii) the Commission for the Clarification of Truth, Co-existence and Non-Repetition, (iii) the Special Unit for the search of missing persons and (iv) specific measures of reparation, would together make up Colombia’s unique and innovative Integrated System of Truth, Justice, Reparation and Non-Repetition, comprising all four components of the transitional justice paradigm – and encompassing both judicial and non-judicial mechanisms.³⁸⁷

The role and leverage of the ICC and the Office of the Prosecutor

Finding agreement to the criminal justice component – the SJP – of the Integrated System was perhaps the most challenging part. As a parallel justice system operating alongside the ordinary civilian court system with exclusive jurisdiction of individuals who participated in and committed crimes during the conflict,³⁸⁸ it was inspired by the South African experience that emphasized truth-telling.³⁸⁹ The SJP allows for reduced sentences to those who confess, as long as they “lay down their arms and reintegrate into civilian life (in the case of FARC combatants), recognize their responsibility and contribute to victims’ rights to truth, reparation, and non-repetition”.³⁹⁰ Those who cooperate will serve their terms by working to assist victims and repair the damage to society instead of serving a prison sentence.³⁹¹ As per the Rome Statute, amnesties for the crimes of genocide, crimes against humanity, war crimes and other serious violations of human rights and international humanitarian law are impermissible. In this regard, the United Nations experience with the 1999 Sierra Leone peace agreement was also taken into consideration during the talks.³⁹²

While a few international human rights organizations expressed concern about the SJP, notably Human Rights Watch (HRW) who considered that the agreement constituted a denial of justice,³⁹³ other observers have found that “many of the direct victims of the conflict have expressed a more conciliatory approach than the fiercest political discussants.”³⁹⁴ Sergio Jaramillo noted that impunity be measured by the level of fulfilment of victims’ rights. The High Commissioner for Human Rights considered that the Integrated System offered a “unique opportunity” to address victims’ rights.³⁹⁵ Nylander recalls that to reach agreement on the SJP, the Office of the Prosecutor of the ICC played a constructive role during the peace process and by saying the right things publicly.³⁹⁶ For instance, in May 2015, the Deputy Prosecutor of the ICC said that effective sanctions can take different forms that may not be established by the Rome Statute and that should seek to protect the interests of victims and recognize their suffering.³⁹⁷

*The existence of the ICC was tremendously useful because it forced the parties to take it into account. It also helped the process from criticism. We reminded each other that [the peace process] was really about finding solutions for victims.*³⁹⁸

Fabrizio Hochschild also underscores the pivotal role played by the Office of the Prosecutor in gaining acceptance among Colombian society of a broader understanding of justice beyond punitive measures. Hochschild recalls his close engagement with the Deputy Prosecutor throughout the peace talks to this end, in particular the consultations held ahead of the latter’s speech at a conference in Bogota on 13 May 2015.³⁹⁹ “For the first time, the ICC agreed that with the four elements of transitional justice fulfilled –

truth, justice, reparation and non-repetition – punitive justice measures could be lessened. This was a huge blessing and allowed the Colombians to design its own model of justice and accountability.”⁴⁰⁰ There were real concerns that had Colombia pursued the path of long sentences, the peace talks could have broken down, Hochschild recalls.

On 28 October 2021, the Prosecutor of the ICC announced the closure of the preliminary examination on the situation in Colombia, initiated in 2004, stating that “complementarity is working today”.⁴⁰¹ By signing a new Cooperation Agreement – the first of its kind between the Office of the Prosecutor and a State Party to the Rome Statute – so called “active complementarity” is now underway in Colombia in which the two signatories undertake to ensure that domestic transitional justice processes remain on track.

The final agreement and the road to justice

Just how divisive the issues of the SJP and accountability for FARC members were among the Colombian public played out most demonstrably in the narrow rejection (0.5%) of the Final Peace Accords in a public referendum in October 2016. Significant revisions, including on the SJP, were subsequently made by the parties. On 24 November 2016, the two houses of Congress approved the Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace.⁴⁰² In this Final Agreement, the parties recognize that the outcome of the referendum “does not mean a rejection of the right to peace or of fundamental human rights”. The parties emphasize that “peace has come to be universally described as a superior human right and as a prerequisite for the exercising of all other rights”. These provisions illustrate the indivisibility between attaining peace and realizing human rights and that these fundamentally belong to the people. In this spirit, Tom Koenigs, Germany’s Special Envoy to the Colombian peace process, opines that the “greatest human rights achievement of the Final Agreement was that political violence lost legitimacy”.⁴⁰³

Similarly, Jonathan Powell recalls that President Santos, in deciding to initiate talks, understood that the conflict could end only through political means.⁴⁰⁴

At the center of this aspiration stand the victims and their rights to truth, justice, reparations and guarantees of non-repetition.⁴⁰⁵ This focus allowed Colombians to confront the past while moving toward the future. Similarly, Howland underscores that the victims’ section cannot be understood in a limited sense: Rather, the Agreement is about transforming society.⁴⁰⁶ When Secretary-General Ban witnessed the signing of the Agreement in Bogotá on 26 September 2016, he hailed the parties’ “vision to bring the victims to the forefront”.⁴⁰⁷ The High Commissioner for Human Rights, Zeid Ra’ad al Hussein, was also in attendance. In fact, and in a remarkable demonstration of the role that OHCHR and the United Nations played throughout the peace process, High Commissioner Zeid — together with Todd Howland and Leila Zerrougui, the Special Representative of the Secretary-General on Children and Armed Conflict — were invited to meet the FARC Secretariat in the hills surrounding Cartagena at dawn of the same day the signing took place. FARC wanted a final confirmation and go-ahead that it should sign the Final Agreement.⁴⁰⁸

At the signing, High Commissioner Zeid commended how human rights permeated the Agreement and that it assigned a role for OHCHR in its implementation.⁴⁰⁹ This includes human rights of victims, persons deprived of liberty and security guarantees for former combatants. Since 2016, OHCHR has thus an extended country mandate to accompany the Government and FARC in these and other commitments to achieve just and sustainable peace.⁴¹⁰ It has, it should be noted, been argued that the ideal scenario would have been to also ensure the inclusion of human rights in the United Nations Verification Mission in Colombia established by the Security Council in January 2016.⁴¹¹

Colombia is an important example of the role that OHCHR and United Nations Country Teams can play in supporting and informing a peace process from inception to end and in encouraging effective implementation of the parties' commitments. A human rights presence on the ground facilitates efforts to keep human rights high on the agenda throughout a peace process and can influence common positions and agreements on human rights by the parties. By being present at local level and by supporting civil society activists, OHCHR offers a "moral authority" from the United Nations that is very important, says Tom Koenigs. Through its work, he says, the level of dignity of those who felt oppressed can increase. This, Koenigs underscores, "is the essence of human rights".⁴¹²

Going forward, through its comprehensive mandate and country-wide presence, OHCHR will continue to support Colombia in addressing outstanding human rights issues which, especially economic and social rights in rural areas where state presence is weak, constitute structural causes of violence.⁴¹³ In this continuous process towards sustainable peace, the peace process' premise "for Colombians, by Colombians" prevails.⁴¹⁴

12 Analysis

The role
of human
rights in
mediation —
the heart of
the matter

The choice of this research's title — the heart of the matter — was not made lightly. It is a symbolic allegory of and alludes to three main findings of the research and its eight case studies:

First, human rights and mediation stand at the heart of the why the United Nations was established and are among its foremost tools to achieve its purposes.

Notably, Article 1(1) of the Charter sets out that a main purpose of the United Nations concerns the prevention and peaceful settlement of disputes in conformity with justice and international law. As the analysis of the Charter's travaux préparatoires illustrated, Article 1(1) — the first purpose of the United Nations — was shaped by a firm conviction among the drafters that domestic and international peace depended on the realization of human rights — “a necessary condition for peace”, as the Colombian delegate in San Francisco put it. Action to promote respect for rights was thus another critical objective of the new world Organization, as stipulated in Article 1(3). That the United Nations Secretary-General was originally proposed the title of ‘Moderator’ further speaks to the centrality of mediation among the methods of the Secretariat and its Chief Administrative Officer to achieve these objectives: As a political function *above* politics, the Secretary-General and their Secretariat were established to help parties to a dispute resolve and settle their differences peacefully, in conformity with justice and international law, including human rights. This understanding may have influenced the approach of Count Bernadotte who, as the first United Nations mediator, gave human rights a central place in his proposed conclusions of September 1948 for a “reasonable, equitable and workable basis for settlement” in the Israeli-Palestinian conflict.

Second, human rights are at the heart of mediation.

Human rights issues oftentimes stand at the beginning (the reason) and end (the objective and outcome) of mediation and run throughout (the process) in order to be effective and legitimate and have lasting impact by generating social and political change. “Human rights are not a barrier to conflict resolution. They can be the very building blocks of mediation”, according to Nicholas Haysom.⁴¹⁵ The breakdown of peace or trust necessitating mediation are most often rooted and manifested in deprivation of rights: “You do mediation because you wish to stop human rights violations; so, the essence of mediation is human rights violations at their most extreme”, as stated by Jeffrey Feltman.⁴¹⁶ Similarly, the desired outcome of mediation is often to repair those conditions. As Álvaro de Soto described the essence of the 1992 peace agreement in El Salvador: “To create a framework within which human rights can be enjoyed”.⁴¹⁷ For the same reason, mediation ideally addresses the human rights causes, symptoms and aspirations that underpin disputes and conflict by looking both backwards (justice for victims) as well as forward (institutional protection for human rights) to achieve sustainable peace. Persuasive communication on human rights during a mediation process can also be as important for the effectiveness of mediation as for its legitimacy. When Martti Ahtisaari left the peace talks in Helsinki to travel to Jakarta to address allegations of ongoing atrocities against civilians in Aceh, he not only signaled that violations were unacceptable but that their continuation could put an end to negotiations. As the only universally agreed standards of human dignity and well-being, human rights lend a unique credibility to the mediator as an impartial actor while providing the direction of the future.

Third, human rights are one of the most difficult aspects of mediation.

“This is a difficult conversation. Whenever power feels secure and settled, it doesn’t matter what anyone says. In the central issue of power, human rights are a footnote”, says one senior United Nations official.⁴¹⁸ The geopolitical landscape and nature of conflicts have changed radically over the past two decades, if not only over the past few months. Human rights principles and standards are likely to suffer from this trend and, as expressed by another United Nations official, can easily “become the first victim of the mediator”.⁴¹⁹ With the notable exception of the peace process in Colombia, today’s shrinking space for human rights globally is reflected also in mediation. The political context of the post-Cold War era, which paved the way to the Chapultepec Agreement and the creation of the mandate of the OSCE High Commissioner on National Minorities in 1992, is long gone. Mediation processes are less about comprehensive settlements as once achieved for El Salvador and Aceh, and more about securing — in the best-case scenario — temporary ceasefires.

In today’s asymmetric and complex big power conflicts, governments do not “have to advance human rights to consolidate power” as one interviewee put it bluntly. “The authoritarian state will advance human rights only if it benefits, and as long as it consolidates its power.”⁴²⁰ In these settings, discussions on human rights are difficult and likely to focus primarily on accountability. “Human rights are critical for any mediation process, but the difficult aspect is legal accountability. It is always seen as a zero-sum game and it is all about consolidating power”.⁴²¹ In contexts such as Syria, status quo is preferable to parties rather than agreeing even to confidence-building measures which may not only be perceived as a sign of weakness but understood as moving towards the prospect of individual criminal accountability.⁴²²

Along similar lines, and with the example of the most recent peace process South Sudan in mind, Hilde F. Johnson notes how human rights violations documented by the United Nations and others contributed to urging the parties to negotiate and come to an agreement. But how human rights may unblock political impasse during a mediation process continues to be much more difficult to identify. As indicated by Hilde F. Johnson, a delicate balance needs to be found as pushing it too hard can be risky as it can scare the parties off.⁴²³

A fragmented mediation field: impact on United Nations-led mediation and human rights

This increasingly complex environment, coupled with an institutional separation between mediation experts and human rights experts where in-depth understanding of each other's area of expertise remains limited, does not facilitate efforts to strengthen human rights in mediation. In addition, interviewees spoke about an increasingly normative injunction in mediation where human rights are one among other "single issues advocacy" or "mono-causes", such as youth and the environment. This has built up tension between different normative champions with different claims of how and which "norms" should best be included in mediation.⁴²⁴ This uptick in normative aspects in mediation has been linked to a situation where parties are moving away from United Nations-led mediation with its perceived normative load.

Numerous interviewees raised this new reality: the fragmented and crowded mediation field of today. A representative of Humanitarian Dialogue pointed straight to this issue when answering the question to what extent human rights are integrated in today's mediation processes:

“It is hard to answer as, in many cases, mediation is so fragmented and given the absence of a negotiation table”.⁴²⁵ Several interviewees addressed the direct impact that this has on the United Nations. “There is such proliferation of actors that reduces the United Nations’ potential”, according to Jeffrey Feltman. He notes: “With polarization and increased professionalization of mediation, it is easier to persuade governments to engage with organizations such as Humanitarian Dialogue, the Berghof Foundation, etc”.⁴²⁶ A mediation expert linked this situation directly to a situation where parties to conflict may move away from normative mediation: “Parties did not use to have so many options of mediators; now there is the option to turn to a mediator without a normative approach. This is a key concern to me”.⁴²⁷

This in turn raises the question to what extent human rights is integrated in the mediation work of non-official intermediaries. The research found that an explicit human rights perspective in the approach, activities and objectives of such organizations is largely missing. This was unexpected, given the assumption that the opportunity of raising human rights issues in informal settings may be easier compared to high-level official negotiation processes. The opposite seems to hold true. Close to all representatives of non-official organizations interviewed for this study, including the Berghof Foundation, Conciliation Resources, Humanitarian Dialogue and Inter Mediate, noted that human rights are not on the forefront of their organizations’ work. Some noted that human rights were deliberately not invoked in order to ensure an openness to dialogue in the first place and to keep that door open, while others noted that concepts such as human rights and international treaties are abstract concepts to many groups they work with and therefore difficult to integrate in their work. Many therefore welcomed the opportunity of a dedicated discussion on the topic.

While unexpected, it may not be a surprising finding. As Andrew Gilmour of the Berghof Foundation noted; “many people in the peacebuilding business see human rights as

mostly about calling out perpetrators of gross human rights violations and – unfortunately – less about what else human rights can bring to peace processes”.⁴²⁸ As a result of this “very incomplete view” of the potential of human rights work, they tend to see human rights as not being easily reconcilable with mediation, which is all about the “art of compromise”. Gilmour notes that some mediators thus tend to speak of “social grievances” instead, as this phrase elicits a less negative reaction even though the meanings are often practically identical.

Jonathan Powell of Inter Mediate describes the approach he pursues as head of a non-official mediation organizations as follows: “As a mediator, it is not for me to set the agenda and insist on human rights. But an agreement that doesn’t address human rights is not a successful one”.⁴²⁹ Katia Papagianni of Humanitarian Dialogue elaborates and reflects on the absence of “entry points” with human rights actors, as opposed to humanitarian actors with whom mediators interact a lot on the ground. “The key is being operational on human rights in a way that would be understandable and useful to the mediator”, she says.⁴³⁰

Given the increasing role and influence of non-official intermediaries in mediating conflicts, expanding their understanding and knowledge of human rights and finding meaningful and concrete ways of engagement with human rights experts is critical. The same holds true for the United Nations, in particular as many senior officials holding mediation functions may be appointed from outside the Organization with limited prior exposure to human rights or in-country human rights work by the United Nations and other organizations. A more holistic understanding of human rights and how human rights can be a helpful tool that can be used strategically and open the conversation would go a long way. “Mediators will always want to maintain the consent of the parties. It is a matter of showing a mediator concretely when and how human rights have been useful – even to have some examples.”⁴³¹

To highlight and illustrate some of these examples has been a main objective of this research. Based on the eight case studies and the interviews, the following section seeks to distill the “how” in this regard: How human rights were integrated in mediation and how human rights facilitated the mediation process and its overarching objectives — and how to achieve impact.

Identifying how to better integrate human rights in mediation

The research identified seven core answers to the question how to better integrate human rights in mediation:

- (i) Appealing to the self-interest of the parties;
- (ii) Incentivizing by communicating human rights humbly but firmly;
- (iii) Defusing tension in the mediation process;
- (iv) Sequencing with pragmatism;
- (v) Approaching human rights holistically, with increased attention to economic, social and cultural rights;
- (vi) Placing victims at the heart; and
- (vii) Benefitting from human rights expertise and networks.

Appealing to the self-interest of the parties: legitimacy, credibility, standing, stability

The mediation principle of consent of the parties⁴³² does not necessarily go hand in hand with the human rights ethos of speaking truth to power by exposing and pointing to serious human rights violations and developments. Interviewees agreed that this balancing act necessitates the art of appealing to the self-interest of the parties and that this is a prerequisite of successful normative mediation. As former High Commissioner on National Minorities (HCNM), Ambassador Vollebaek would speak to the benefits of broader regional security interests as well as to internal social cohesion when arguing for greater integration of minorities in OSCE States. To this end, referring to existing human rights commitments of participating OSCE States, including those outlined in the European Framework Convention on the Rights of National Minorities, as “owned” by the States themselves would facilitate the process. When applicable, Ambassador Vollebaek would also argue that compliance with human rights instruments could accelerate important political aspirations, such as European Union membership.

As one senior United Nations official put it bluntly: “It is all about interests.”⁴³³ However, appealing to the self-interest of the parties can form part of approaching human rights as a problem-solving tool. This often involves a process of a mediator translating norms into concrete political, administrative or legal proposals. In the case of the HCNM, the development of the numerous Guidelines or Recommendations issued by successive High Commissioners facilitated this process. In addition, one of Max van der Stoel’s techniques in addressing the crisis of the Crimean Constitution in the 1990s, consisted in specific proposals for ensuring political participation of national minorities and indigenous peoples. In the peace processes in El Salvador and Aceh, agreeing to human rights was not only necessary from the perspective of international standing and credibility of the Salvadorian and Indonesian governments respectively — it was indispensable for the FMLN and GAM movements. In the Salvadoran case, as Teresa Whitfield recalled, the FMLN had experienced repression and the abuse of human rights as primary drivers of the conflict, so insisted on frontloading the negotiating process with attention to, and an agreement on, human rights.⁴³⁴ The final peace agreement that ended the civil war in El Salvador consequently set out the parameters for a fundamental transformation of the national armed forces under a new doctrine based on human rights and rule of law principles.

Applied to today’s contexts, the importance of taking into account the self-interest of the parties to advance human rights considerations in peace processes may best be summarized as follows: “We need a much more sophisticated understanding of human rights in these processes. It is a process. We need to take into account the interests of the key actors and stakeholders and, if human rights are our end goal, how do we get there, keeping in mind the interests of those actors? So, starting from the goal, and going backwards in light of the interest of actors.”⁴³⁵

Incentivizing — communicating human rights humbly but persuasively and firmly

Time and again, interviewees underlined the quality of humility as a necessary approach and skill among both mediators and human rights experts in order for human rights informed mediation to succeed. From the perspective of human rights experts, humility was referred to a self-reflection on the need to be more pragmatic in terms of what can realistically be achieved in a mediation process and, on that basis, how to identify possible solutions for change. Humility was seen as tantamount to acknowledging the complementarity of expertise and approaches — and a starting point to identify how to better contribute to mediation processes and, conversely, more easily gain acceptability as a strategic partner to mediators. “To have the two go together — peace and justice — requires that we have the right approach; not to lecture and to be humble.”⁴³⁶ Assistant Secretary-General Brands Kehris adds the importance for human rights experts to also be conversant in the language of mediators so that human rights analysis and recommendations can be framed in language and concepts that is more understandable to the peacemakers.⁴³⁷

From the perspective of the mediator, humility and active listening were often seen as two sides of the same coin and a necessary condition of respect and impact. The “Ahtisaari trademark” is relevant here: The ability to convey disagreeable things pleasantly but with conviction, as proven by his successful journey to Jakarta in May 2005, both in terms of changing military behaviour and in facilitating continued peace talks in Helsinki. “People have to be disarmed in the right way so that they don’t stop the dialogue straight away”, according to Ahtisaari.⁴³⁸ The emphasis placed by Packer on mediators’ ability to interpret human rights standards and communicate them in a convincing and understandable way for impact comes to mind. Humble but firm can be the professional conduit that enables a normative mediator to be accepted by the parties in the first place and, even better, be effective as normative mediators. As one mediation expert reflected: “Most useful is when the mediators themselves are the carrier of human rights.”⁴³⁹

Awareness and understanding of local customs and traditions can be both an entry point and leverage in this regard, as illustrated by references to the Koran by Jan Eliasson and Iqbal Riza in the mediation of the Iran-Iraq war. “It is important for any mediator to understand where the other party is coming from in order to find entry points for meaningful interaction, for example to know about Islamic principles and norms when negotiating in an environment dominated by Sharia”, says Christian Salazar Volkmann.⁴⁴⁰

This touches on an element that several interviewees highlighted: The challenge of human rights still being perceived as a Western concept rather than universal standards of human dignity, protection and well-being. A seasoned United Nations mediator specifically refers to this as a recurring difficulty for mediators and notes that even in situations where the parties do not perceive human rights a “Western concept”, it can be used against mediators based on that argument. Under such circumstances, using related references such as “rights of people” or “rights of minorities” can be impactful.⁴⁴¹

Defusing tension in the mediation process: from confidence-building measures to separate justice mechanisms

The cases of Iran-Iraq and Guinea illustrated, albeit very differently, how mediators sought to address human rights concerns while protecting the mediation space. In the Iran-Iraq mediation, the June 1984 agreement by the parties vis-à-vis the Secretary-General to end attacks on civilian areas was seen by Jan Eliasson as the most successful of confidence-building measures attempted during the war and as a step to reduce violence, encourage adherence to international humanitarian law and create more confidence between the parties in order to address other issues — even if the “moratorium” only held for less than a year. The initiative of the Secretary-General’s office to deploy experts, in parallel to the ongoing mediation track, to independently verify the alleged use of chemical weapons was unprecedented and brought reports of the use of chemical weapons to the attention of the Security Council. Calls on the parties to cease attacks on civilian population centers and to observe the provisions of the 1925 Geneva Protocol on chemical and bacteriological weapons were both included as two of eight points in a plan presented to the two Governments by Secretary-General de Cuéllar

in March 1985. Importantly, this eight-point-plan was construed not only as an initiative to ensure a ceasefire but also as an instrument to reach a “comprehensive agreement” that would address the conflict’s underlying issues.

In a vastly different context, the collective efforts of the AU, ECOWAS and United Nations to mediate the political crisis in Guinea in 2008–2010 engaged an International Commission of Inquiry to independently investigate the serious human rights violations committed in Conakry in September 2009. This initiative, proposed by ECOWAS and established by the United Nations Secretary-General, ran in parallel to and “bracketed” the immediate controversies from the negotiation track and accelerated the latter. Through the establishment of the Commission of Inquiry, the mediation was seen to respond to public demands of justice for victims. “Human rights can defuse tension through information from the ground”, and the case of Guinea 2008–2010 seen as an example where “mediation created [such] activities that defused tension and violence”.⁴⁴²

Sequencing with pragmatism — justice with but beyond accountability

In analyzing the role of human rights in mediation, the question of ‘how’ is intimately connected to the question of ‘when’. Both Personal Envoy Staffan de Mistura and SRSG Nicholas Haysom stressed the issue of timing as essential.⁴⁴³ Haysom adds that “if you approach human rights as a consequential sequence of mediation it can help you develop new areas of consensus”.⁴⁴⁴ Human rights experts interviewed broadly agreed, with one OHCHR official linking sequencing to the abovementioned diffusion of tension from the mediation process. “We can be an element that takes the pressure away from the process — human rights can contribute to the process. How? Accountability is a matter of how and when; it is a matter of sequencing.”⁴⁴⁵

This points to the issue of pragmatism, an element which may not traditionally be associated with human rights engagement from the point of view of the mediator.⁴⁴⁶ “It is a pity that the mediation field has been hijacked by a narrow understanding of human rights mainly related to transitional justice”, according to Todd Howland of OHCHR.⁴⁴⁷ In this context, Maarit Kohonen Sheriff of OHCHR

rhetorically asks: “How do you convey the message that human rights is so much more than that [accountability]? Not everything is needed at the same time, but it is also not one or the other. For this to happen, the mediator needs to have much more knowledge [on human rights].”⁴⁴⁸ This is why opportunity for engagement between mediation teams and human rights experts is critical.

Stronger collaborative approaches throughout peace processes will help both human rights experts as well as mediators address the recurring conundrum: How to ensure that “those who have initially exercised power commit to reform which includes the possibility of facing trials”, as Nicholas Haysom puts it. “This often means sequencing the response. It does not deny the need for truth and reconciliation, but to conduct arguments with the detractors. If you want a lasting peace, you need an accounting for the past. It may take some time, like in Argentina. You need to persuade to that effect. You can also argue that there needs to be a reckoning with the past for there to be a future.”⁴⁴⁹

Addressing the past while pointing the way to the future: approaching human rights holistically, with increased attention to economic, social and cultural rights

This brings us to one essential conclusion of the research: A holistic approach to human rights is necessary, not only to ensure greater inroads and acceptance for human rights issues in mediation but as a necessary condition for achieving a durable and legitimate peace agreement and a peace that holds. If such understanding of human rights can be cultivated across the key actors involved in peace mediation, this author is hopeful that we can move away from an unhelpful tendency to consider human rights inimical to mediation. Several interviewees referred to this perception and how mediators often perceive of human rights as an obstacle to successful mediation.

A mediator who addresses both the past and the future through a human rights lens in the search for solutions to conflict is a good starting point of approaching human rights holistically in the context of mediation. While the 2005 Memorandum of Understanding signed between the Government of Indonesia and the GAM has been criticized for leaving out the details of implementation, it did provide the framework to do exactly this. Martti Ahtisaari is said

to have had doubts whether the provisions related to the Human Rights Court and the Commission for Truth and Reconciliation to address Aceh's dark past would be realized in practice, but he remained convinced that it was better to retain them in the MOU. The MOU also set out expectations for future institutional protection of human rights by way of governance, including through provisions on political participation and rule of law in the section on "Governing of Aceh" and by committing the Government of Indonesia to adhere to the two International Covenants.

In today's competitive field of multiple mediation actors coupled with increasing political reluctance of outside engagement, the importance of holistic approach to human rights beyond accountability is further underscored. According to Jeffrey Feltman, "No government will welcome international mediation; they do not wish the scrutiny. It is very hard to get the door for official mediation. But if you do it holistically, then we may have a door opening."⁴⁵⁰

In this regard, several OHCHR interviewees pointed the fact that economic, social and cultural rights are currently missing in mediation and called upon the United Nations to make consideration of these rights much more central in peace processes — beyond facilitating formulation of important provisions on health, education and social protection in peace agreements, they are key elements for the foundation of sustainable peace. Currently, economic, social and cultural rights were described as "an under-rated element of mediation".

In fact, it goes back to the centrality of the full spectrum of human rights to achieve peaceful relations between states as advocated by many delegates at the 1945 San Francisco conference on the United Nations.⁴⁵¹ Unresolved economic and social inequalities and injustices are oftentimes the main drivers or triggers of conflict and violence — a better grasp by mediators of economic, social and cultural rights, and of the international and regional mechanisms to promote and protect them, is therefore essential and provides a key untapped human rights tool in mediation efforts.

Placing victims and people at the heart of the peace process

It was not until the Colombian peace process (2012–2016) that victims of armed conflict were involved as active participants in peace mediation talks. While a victim-centered approach is at the heart of international human rights law, this late development can be understood against the fact that recognition that the state has a responsibility to provide justice for victims of armed conflict and that sustainable justice requires not only judicial accountability but also truth and reparations has only emerged in recent years.⁴⁵² The sui generis peace process of Colombia can thus be seen in the context of the development of the rights of victims in international law. By deliberately placing “victims at the heart of the agreement between the Government and FARC” at the outset of the talks in the Framework Agreement of 2012, and by securing their participation to inform the negotiation and substance of the 2016 Final Agreement, the Colombian peace process offers a unique model for placing human rights at the heart of mediation. Hilde F. Johnson agrees with other interviewees that Colombia was a unique case in its emphasis on victims’

rights and underscores how this focus can be a positive factor in finding solutions in a mediation process.⁴⁵³

Also with the Colombian experience in mind, Fabrizio Hochschild opines that the following two elements should be pursued in efforts to strengthen human rights in mediation. First, to push for the participation of victims: “This is good for the peace process, good for human rights and gives legitimacy to a process”. Second, to undertake popular consultations: “This will bring in human rights automatically”.⁴⁵⁴

Aside from the popular consultations organized throughout Colombia as example of the former, similar processes identified by interviewees were the national dialogue process in Yemen (2013–2014)⁴⁵⁵ and the Libyan Political Dialogue Forum (2020). Katia Papagianni notes that such national dialogues represent “the momentum when human rights are able to have a role and impact” in mediation. In this context, Papagianni adds that human rights are often front and center in local mediation efforts — similar to the logic of why human rights emerge as key in national dialogues: at the local level, local actors mobilize and organize around human rights issues such as religious freedom and socio-economic rights.⁴⁵⁶ Human rights claims and objectives in such processes concern broader social and political transformation. As another mediation expert reflected: “Human rights in this context help formulate and create coherence for demands that can unite people at national level”.⁴⁵⁷

While the case of Guinea showcased the importance of resolute and immediate action by the international community to investigate serious human rights violations during a political mediation process, we may be witnessing the longer-term impact of successive governments’ failure to establish some form of justice for victims in today’s political upheaval in the country. Participation of victims as a central component in a mediation process, one could argue, reinforces its objective of addressing the past, present and future of a conflict-ridden society from a human rights perspective.

The objective and impartial power of human rights: benefitting from human rights expertise and networks at the local level

The value of an independent human rights in-country presence to a mediation process came to the fore in the case study of Colombia. As observed by a former representative of OHCHR country office in Colombia, its human rights work and reports provided “a factual baseline for negotiation and action”.⁴⁵⁸ Its important role overall in the peace talks — from supporting popular consultations and selecting victims who would travel to Havana to inputting substantively to the Final Agreement — has also been acknowledged by third parties.⁴⁵⁹ Through independent monitoring and reporting of both parties’ human rights records on the basis of international standards, OHCHR was considered an even-handed and thus a trusted actor⁴⁶⁰ — not only by the parties but by the population.

The latter dimension points to another important way in which a human rights presence can contribute meaningfully to the mediator: through its broad network of contacts and partners among different community groups and various social and political movements. As illustrated by Zeid Ra’ad al Hussein: “With human rights actors or OHCHR involved, you are also bringing in women from different groups in

society and can thus help bring in women community leaders into the actual negotiations”.⁴⁶¹ One mediation expert summarized this as follows: “Human rights actors have so many assets to the mediator. The mediator is always interested in good people and good contacts.”⁴⁶² To Papagianni, making the networks of human rights actors known and available to the mediator including, when appropriate, as active participants in the peace process is one of the best ways in which human rights actors can contribute to a mediation process.

At the core of the asset of human rights actors and presences for mediators are international human rights standards that apply equally to everyone and which forms the basis — and objective — of their work. In the context of the OSCE High Commissioner for National Minorities, the European Framework Convention on the Protection of National Minorities plays a particularly important role. As Christophe Kamp noted, an approach based international human rights standards “avoids the situation of the High Commissioner on National Minorities being perceived as choosing sides in a particular situation”.⁴⁶³ Any mediator, Kamp noted, needs to be able to fall back on objective criteria to be successful. Assistant Secretary-General for Human Rights Brands Kehrreis elevates this aspect when identifying how human rights contribute to mediation processes: “Human rights provide an objective basis that has been internationally agreed upon. This is why it is very important to include human rights information and analysis in the analysis for mediators — and throughout the conflict cycle.”⁴⁶⁴

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Concluding reflections

This study suggests that human rights has played an essential role in mediation efforts of the United Nations and other mediation actors since 1945 — but far from always, and, as illustrated by the case studies, have at times remained a little known or utilized dimension of mediation. The central role that OHCHR Colombia Office played throughout the peace talks until the signing of the 2016 Final Peace Agreement is perhaps the most significant and recent example of the relevance and political contribution that human rights information, analysis and actors can play in mediation. The Colombian experience holds many valuable lessons learned and good practices that the United Nations and non-official intermediaries can draw upon when exploring how mediators can benefit from human rights actors, approaches and analysis in concrete terms.

Critically, the Colombian peace processes illustrates that human rights are a powerful and objective but untapped framework for mediators. The study indicates that there is a degree of urgency for the United Nations and other actors to assert — or reclaim — the place of human rights in peaceful settlement of disputes, including mediation, that was directly argued for at the onset of its establishment. This imperative is linked to the importance for the United Nations, at a time of unprecedented challenges, to reassert its unique role as the sole universal organization mandated to advance human rights, peace and development world-wide. To some interviewees, the topic at hand was indivisible from the overarching question of the legitimacy and relevance of the Organization, and especially in the field of mediation where other actors have incrementally assumed prominent roles.

As the preceding analysis sought to illustrate, the study claims that human rights — i.e. universal rights that protect and enable the dignity and well-being of the human person — should be the heart of the matter in United Nations and other mediation processes. This is based on three main findings of the study: First, human rights and peaceful settlement of disputes were and remain the foremost objectives and tools of the United Nations to achieve the

goals set out in the Charter. Second, human rights permeate the entire mediation process as they both precede and often constitute both the reason why mediation is required and its end goal. Third, while the two first findings hold true at a conceptual basis and are confirmed in some of the case studies (including Aceh, Colombia and Guinea), reality oftentimes speaks a different language. Human rights are one of the most difficult aspects of mediation since they concern, essentially, and like mediation itself, matters of politics.

A call for renewed attention and action

Despite the centrality of human rights as a core purpose of the United Nations and mediation as a main tool to peacefully resolve and prevent conflict, the two have still not sufficiently merged at an institutional and operational level of the Organization. Assistant Secretary-General for Human Rights Brands Kehriss confirms this finding when noting that human rights are still not consistently integrated in mediation processes: “This is a big shortcoming, because human rights are a very helpful framework for mediators, and not only within the United Nations”.⁴⁶⁵

Integration of human rights in mediation remains ad hoc, dependent on personalities and constrained by resource capacity and priority-setting. A similar divorce could be discerned also in mediation processes pursued or supported by non-official intermediaries where the absence of a human rights perspective emerged among the key findings of the research. Part of why human rights and mediation remain by and large in separate tracks institutionally — and, consequently, by and large also operationally — is found in the inherently political nature of mediation

where issues of power, compromise, quiet diplomacy and the art of the possible are among its traditional hallmarks. Human rights are generally perceived of at the opposite end — exposing and speaking truth to power and non-negotiable — and therefore seen as inimical to mediation.

Yet, this study reveals a reality that is much more nuanced. It suggests that much of this separation may be due more to built-up perceptions and misunderstandings of the other actor and area of work in addition to a lack of opportunities of joint engagement rather than due to a deliberate divisions and exclusion. It is a two-way dimension: As much as experts in mediation would benefit from adequate exposure to and understanding of human rights, human rights professionals similarly would benefit from greater skills and expertise in mediation, peace-making and quiet diplomacy. Interviewees on both sides acknowledged this and recognized corresponding shortcomings. The opportunity to discuss the gap during interviews gave rise to a strong interest in the human rights-mediation nexus and calls for a renewed focus and effort to explore the topic further.

This also points to the fact that integration of human rights in mediation is an underexplored and under-researched topic, both within and outside the United Nations. The keen interest and genuine curiosity expressed by interviewees is a positive marker, however, and serves as a real needs-based point of departure from which to look anew on the interrelationship between mediation and human rights. Internally, the Secretary-General's Call to Action for Human Rights and Our Common Agenda provide two important frameworks on the basis of which to advance discussion on how human rights, as a problem-solving analytical and operational tool, can contribute to the political peace-making objectives of United Nations mediators. The joint DPPA-OHCHR project on "The Role of Human Rights in Mediation" was initiated with a very similar objective and represents an important avenue to deepen dialogue and strengthen mutual understanding on the topic. This year's 30th anniversary of the adoption of the Vienna Declaration

and Programme of Action, which led to the establishment of the United Nations High Commissioner for Human Rights, and the 75th anniversary of the Universal Declaration of Human Rights in 2023 also offer important opportunities to highlight the central role of human rights to build and sustain peace and development. As the first line of the Universal Declaration reads: "Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

Annex 1

*Name of interviewees**List of interviewees*IN ALPHABETICAL ORDER ⁴⁶⁶

Ngozi Amu
 Leena Avonius
 Ilze Brands Kehris
 Mahamane Cisse-Gouro
 Jonathan Cohen
 Staffan de Mistura
 Abdel-Fatau Musah
 Álvaro de Soto
 Said Djinnit
 Jan Eliasson
 Hilde F. Johnson
 Jeffrey Feltman
 Andrew Gilmour
 Nicholas Haysom
 Sara Hellmüller
 Fabrizio Hochschild
 Todd Howland
 Meeri-Maria Jarva
 Christophe Kamp
 Maarit Kohonen Sheriff
 Tom Koenigs
 David Lanz
 Francesco Motta
 Dag Nylander
 Parfait Onanga-Anyanga
 Andrea Ori
 John Packer
 Katia Papagianni
 Michelle Parlevliet
 Jonathan Powell
 Zeid Ra'ad al Hussein
 Iqbal Riza
 Christian Salazar Volkmann
 Joaquín Villalobos
 Knut Vollebaek
 Teresa Whitfield
 Lamberto Zannier

ENTITY (FORMER OR PRESENT)	NO.
United Nations	31
Non-official intermediaries, academia and NGOs and others	22
Regional organizations and Member States	04
TOTAL	57

Annex 2

United Nations Guidance for Effective Mediation (2012)

International law and normative frameworks

Mediation takes place within normative and legal frameworks, which may have different implications for different mediators. Mediators conduct their work on the basis of the mandates they receive from their appointing entity and within the parameters set by the entity's rules and regulations. Thus, United Nations mediators work within the framework of the Charter of the United Nations, relevant Security Council and General Assembly resolutions and the Organization's rules and regulations. Mediators also conduct their work within the framework constituted by the rules of international law that govern the given situation, most prominently global and regional conventions, international humanitarian law, human rights and refugee laws and international criminal law, including, where applicable, the Rome Statute of the International Criminal Court. In addition to binding legal obligations, normative expectations impact on the mediation process, for example regarding justice, truth and reconciliation, the inclusion of civil society, and the empowerment and participation of women in the process. Consistency with international law and norms contributes to reinforcing the legitimacy of a process and the durability of a peace agreement. It also helps to marshal international support for implementation. However, balancing the demands of conflict parties with the normative and legal frameworks

can be a complex process. Mediators frequently have to grapple with the urgency of ending violence in contexts where there is also a clear need to address human rights violations and other international crimes. The applicable law may not be the same for all conflict parties, or their understanding of that law may vary. In addition, while there is a growing international consensus on some norms, not all norms are equally applied in different national contexts and there can be different interpretations within a given society.

Guidance

Mediators must be briefed and familiar with the applicable international law and normative frameworks and should:

Be clear and convey their mandates and the legal parameters applicable to their work. Ensure that the parties understand the demands and limits of applicable conventions and international laws.

Ensure that communications with the conflict parties and other stakeholders on legal matters and normative expectations are consistent; this is particularly important in instances of co-led or joint mediations.

Be clear that they cannot endorse peace agreements that provide for amnesties for genocide, crimes against humanity, war crimes or gross violations of human rights, including sexual and gender-based violence; amnesties for other crimes and for political offences, such as treason or rebellion, may be considered — and are often encouraged — in situations of non-international armed conflict.

Explore with the conflict parties and other stakeholders the timing and sequencing of judicial and non-judicial approaches to address crimes committed during the conflict.

Balance the need to adhere to international norms without overtly taking on an advocacy role; facilitate access for partners and civil society actors to engage directly with conflict parties and other stakeholders regarding applicable norms.

Annex 3

Council of the European Union, 2020 Concept of EU Mediation Policy (11 December 2020)

4. EU mediation principles

EU mediation engagements are guided by a set of principles outlined below.

a. EU as a value-based actor

The defining feature in EU mediation is that the EU is a value-based actor. The EU's foundational values, as set out in Article 2 TEU, as well as a human rights-based approach in all EU engagement, set the EU apart as a mediation actor. The EU should consistently engage on the basis of its foundational values which include respect for human dignity, freedom, democracy, the rule of law and the respect for human rights, including the rights of persons belonging to minorities as well as pluralism, non-discrimination, tolerance, justice, solidarity and gender equality. A driving force of EU's engagement in mediation is the respect for international law principles and norms. The value-based actor principle is implemented hand-in-hand with a sense of humility and respect for local contexts.

EU foundational values and interests go hand in hand, as peace and security, prosperity, human rights, rule of law, democracy, a rules-based global order and effective multilateralism are key objectives underpinning EU external action. The EU recognises that mediation engagements are highly complex in nature, and may require a level of principled pragmatism to achieve overarching objectives. The EU considers that its geopolitical interests and its conflict resolution efforts are complimentary priorities aligned with EU foundational values.

The EU's strengths in mediation add to its geopolitical power. The EU continuously assesses its interests and values in relation to the proceeding of a peace process and its prospective outcomes and takes well-considered, context-specific decisions on how best to constructively engage and support the conflict-affected population.

h. Human Rights

As a value-based actor the EU applies a human rights-based approach to its mediation engagements, in line with the relevant EU and UN norms and standards. Paying due attention to human rights, EU mediation encourages parties to tackle the root causes of conflict, and promotes and favours durable peace agreements that respond to the rights and needs of the conflict affected populations and contribute to sustaining peace.

The EU supports further integration of the conflict prevention and human rights domains, including reaping the benefits of situational and risk awareness among human rights networks for conflict prevention. Human rights are an integral part of the EU's conflict Early Warning System and conflict analysis methodology.

In many cases, mediation efforts take place in highly complex contexts, where one or several parties to the conflict have committed serious violations of human rights and international humanitarian law. The EU will be guided by its policy framework on transitional justice in this regard, also noting that mediation requires being open to speaking to all peace and conflict stakeholders whose positions have a bearing on the prospect for sustained peace.

Annex 4

ECOWAS, ECOWAS Mediation Guidelines (February 2018)

*Principle 10.
Coherence with ECOWAS
and International Norms*

Integral to ECOWAS' Peace and Security Architecture and in particular the Mechanism, the role of ECOWAS Mediator is grounded on the principles and norms defined in the United Nations (UN) and the African Union (AU) Charters, the Universal Declaration of Human Rights and the African Charter on Human and People's Rights.

In addition, an ECOWAS Mediator must abide and promote the series of norms and principles defined in the legal instruments specific to ECOWAS and described in section I above. Indeed, in conducting mediation, the ECOWAS Mediator must pay close attention to ECOWAS' fundamental principles, including equality and inter-dependency, solidarity and self-reliance, non-aggression, the promotion of peace, stability and good neighborliness, promotion of a peaceful environment, recognition, promotion and protection of human and peoples' rights, accountability, economic and social justice, popular participation in development (Revised Treaty of ECOWAS). Furthermore, the ECOWAS Mediator must contribute to the promotion and

consolidation of democratic governments and institutions, good governance and the role of law, the protection of fundamental human rights and freedoms and the rule of international humanitarian law; and sustainable development (Protocol of the Mechanism).

The ECOWAS Mediator must furthermore abide and promote the principles of separation of powers, independence of the judiciary, promotion of non-partisan and responsible press and democratic control of the armed forces, elections, election monitoring and assistance, the role of armed forces, police and security forces in a democracy, poverty alleviation and promotion of social dialogue, rule of law, human rights and good governance among others. Moreover, the ECOWAS Mediator must abide and promote the accession to power in the region through democratic elections, demonstrate zero tolerance for power obtained or maintained through unconstitutional means, and support the supremacy of democratically elected governments' control over Member States armed forces (Protocol on Democracy and Good Governance).

Following the ECPF, the ECOWAS Mediator must also uphold certain specific moral obligations with regard to: (i) ECOWAS responsibility to prevent (actions taken to address the direct and root causes of intra and inter-state conflicts that put populations at risk); (ii) ECOWAS responsibility to react (actions taken in response to grave and compelling humanitarian disasters); and, (iii) ECOWAS' responsibility to rebuild (actions taken to ensure recovery, reconstruction, rehabilitation and reconstruction in the aftermath of violent conflicts, humanitarian or natural disasters).

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Endnotes

- 1 United Nations Secretary-General's remarks to the Security Council, SG/SM/21229, 5 April 2022.
- 2 The Charter of the United Nations (hereinafter 'the Charter'), Article 33 (1).
- 3 The Charter, Article 1(1) (emphasis added).
- 4 Mediation in this study refers to "a process whereby a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements", as defined in the *United Nations Guidance for Effective Mediation* (2012), p. 2. This research is primarily looking at high-level official mediation processes, whether undertaken by the United Nations, regional organizations, individual Member States or non-official intermediaries.
- 5 The joint DPPA-OHCHR project on "The Role of Human Rights in Mediation" is a collaborative project between the Prevention and Sustaining Peace Section (PSPS) of OHCHR NYO Office and MSU of DPPA.
- 6 See, for instance, the event organized by the Berghof Foundation on "Human Rights and Conflict Mediation" on 22 June 2022: <https://berghof-foundation.org/news/hr-mediation-event>
- 7 *United Nations Activities in Support of Mediation, Report of the Secretary-General*, A/72/115, June 2017, p. 4.
- 8 Ibid. p. 12 (emphasis added).
- 9 William O'Neill, "Mediation and Human Rights", *Humanitarian Dialogue* (2005). Available at: <https://www.hdcentre.org/wp-content/uploads/2016/07/MediationandHumanRights-July-2005.pdf>
- 10 Interview, Senior United Nations Official, 16 February 2022.
- 11 See Annex 1. Unless location is specified, interviews were conducted virtually or by phone.
- 12 Non-official intermediaries refer to organizations such as the Berghof Foundation, Humanitarian Dialogue, Conciliation Resources, Inter Mediate and Crisis Management Initiative which engage in mediation and dialogue support activities.
- 13 Sara Hellmüller, Jamie Pring and Oliver Richmond, "How Norms Matter in Mediation: An Introduction" in Sara Hellmüller, Jamie Pring and Oliver Richmond, eds., "Special Issue: Norms in International Mediation", *Swiss Political Science Review*, vol. 26, Issue 4 (December 2020), pp. 345–363.
- 14 Ibid, pp. 347, 348.
- 15 See, for instance, Sara Hellmüller, Julia Palmiano Federer and Mathias Zeller, *The Role of Norms in International Peace Mediation* (Swisspeace and NOREF, April 2015).
- 16 See, notably, Claudia Fuentes-Julio and Raslan Ibrahim, "A Human Rights Approach to Conflict Resolution", *Ethics & International Affairs* (September 2019); Claudia Fuentes-Julio and Paula Drummond, eds., *Human Rights and Conflict Resolution: Bridging the Theoretical and Practical Divide* (New York, Routledge, 2018); Michelle Parlevliet, *Briefing Note: Human Rights and Conflict Transformation* (United Nations, April 2017); Véronique Dudouet and Beatrix Schmelzle, eds., *Human Rights and Conflict Transformation: The Challenges of Just Peace*, Berghof Handbook Dialogue Series no. 9, 2nd ed. (Berlin, Berghof Foundation, 2015); Eileen F. Babbitt and Ellen L. Lutz, eds., *Human Rights & Conflict Resolution in Context: Colombia, Sierra Leone and Northern Ireland* (New York, Syracuse University Press, 2009); Eileen F. Babbitt, "Conflict Resolution and Human Rights: The State of the Art", in *The SAGE Handbook of Conflict Resolution*, Jacob Bercovitch, Victor Kremenyuk, and I. William Zartman, eds. (San Francisco, SAGE, 2009).
- 17 O'Neill, *Human Rights and Mediation* (footnote 9).
- 18 Interview, Sara Hellmüller, Senior Researcher, Graduate Institute of International and Development Studies, 24 January 2022.
- 19 See definition by Ramsbotham and others of conflict resolution, i.e. "a spectrum that includes peaceful containment at one end, through conflict settlement, and on to conflict transformation at the other end". This includes mediation efforts. Notably, it is argued that "some of the greatest tensions and dilemmas between human rights and conflict resolution arise during peace mediation processes, in which third parties need to build up dialogue and consent to end conflict, while facing demands of impartiality, inclusivity and national ownership", Fuentes-Julio and Drummond, eds., *Human Rights and Conflict Resolution: Bridging the Theoretical and Practical Divide* (footnote 16), pp. 5, 7.
- 20 Babbitt, *Conflict Resolution and Human Rights: The State of the Art* (footnote 16), p. 616. The other two key challenges identified are (ii) treatment of human rights violators and (iii) different understandings of how to achieve social change.
- 21 Interview, Ilze Brands Kehris, Assistant Secretary-General for Human Rights, 10 June 2022.
- 22 Beatrix Schmelzle and Véronique Dudouet, "Introduction: Towards Peace with Justice", in Dudouet and Schmelzle, eds., *Human Rights and Conflict Transformation: The Challenges of Just Peace* (footnote 16), p. 6. See also: <https://www.swisspeace.ch/publications/essentials/from-transitional-justice-to-dealing-with-the-past-the-role-of-norms-in-international-peace-mediation>
- 23 Michelle Parlevliet in Dudouet and Schmelzle, eds., *Human Rights and Conflict Transformation: The Challenges of Just Peace* (footnote 16), p. 18.
- 24 Parlevliet, "The transformative potential of human rights in conflict resolution", in Fuentes-Julio and Drummond, eds., *Human Rights and Conflict Resolution: Bridging the Theoretical and Practical Divide* (footnote 16), p. 27.
- 25 Interview, Jeffrey Feltman, 18 February 2022.
- 26 Interview, Hilde F. Johnson, Senior Adviser, European Institute for Peace, Brussels, and former SRSG and Head of UNMISS in South Sudan (2011–2014), 26 November 2021.
- 27 Parlevliet, "The transformative potential of human rights in conflict resolution" (footnote 24), p. 28. See also Parlevliet in Dudouet and Schmelzle, eds., *Human Rights and Conflict Transformation: The Challenges of Just Peace* (footnote 24), p. 22.
- 28 "A strong social contract anchored in human rights at the national level is the necessary foundation for us to work together. It may not be written down in any single document, but the social contract has profound consequences for people, underpinning their rights and obligations and shaping their life chances." *Our Common Agenda – Report of the Secretary-General* (United Nations publication, 2021), para. 10.
- 29 Notably, these 'fundamentals' include impartiality, inclusivity and national ownership, in addition to international law and normative frameworks. See *United Nations Guidance for Effective Mediation* (2012), Annex 2.
- 30 In terms of international law, this study adopts Bell's definition: "Human rights will be defined using customary law and international instruments relating to first, second and third generation rights [and] will deal with three types of human rights provisions figuring in peace agreements: rights to self-determination or minority rights [...], building for the future (institutional protection for civil, political, economic, social and cultural rights), and past human rights violations. Self-determination and minority rights provision are fully considered [...] because it is argued that individual political provisions can be understood in the light of the deal's political arrangements and because international law talks of such [rights]. See Christine Bell, *Peace Agreements and Human Rights* (Oxford, Oxford University Press, 2000), p. 35.
- 31 Parlevliet in Dudouet and Schmelzle, eds., *Human Rights and Conflict Transformation: The Challenges of Just Peace* (footnote 24), p. 20.
- 32 Interview, Teresa Whitfield, Director, Policy and Mediation Division, UN DPPA, 15 February 2022.
- 33 Parlevliet in Dudouet and Schmelzle, eds., *Human Rights and Conflict Transformation: The Challenges of Just Peace* (footnote 24), pp. 15, 17. The author has inserted the word "mediator" in place of "conflict transformation" in the quote paraphrased.
- 34 Interviews, OHCHR officials, 18 and 19 January 2022, Geneva, respectively.
- 35 Interview, Senior United Nations Official, 16 February 2022.
- 36 *United Nations Guidance for Effective Mediation* (2012), p. 16 (emphasis added).
- 37 Álvaro de Soto, *A Mediator's View from Here: Vision, Strategy and Other Elements of*

- Peacemaking (Geneva, Center for Humanitarian Dialogue, 2007), p. 19.
- 38 Beatrix Schmelzle and Véronique Dudouet, “Introduction: Towards Peace with Justice” (footnote 22), p. 13.
- 39 Parlevliet in Fuentes-Julio and Drummond (footnote 16), p. 17.
- 40 In a broader analysis on human rights and conflict transformation, Parlevliet outlines three claims: that human rights: (i) deepen understanding of underlying causes of conflict (i.e. better response); (ii) provide standards, models and mechanisms for addressing causes (i.e. improving substance of response) and inform the process of addressing and transforming violent conflict (i.e. improving implementing strategies and responses). Parlevliet (2017), supra, p. 4.
- 41 Interview, Andrew Gilmour, Executive Director, Berghof Foundation, 17 February 2022, Berlin.
- 42 Interview, Andrew Gilmour, Executive Director, Berghof Foundation, 17 February 2022, Berlin.
- 43 Interview, Francesco Motta, Chief, Asia, Pacific, Middle East and North Africa Branch, Field Operations and Technical Cooperation Division, OHCHR, 19 January 2022, Geneva.
- 44 Interview, Fabrizio Hochschild, 9 March 2022.
- 45 Interview, Jonathan Cohen, Executive Director, Conciliation Resources, 22 December 2021.
- 46 Interview, mediation expert, 20 January 2022.
- 47 Statement by Edward R. Stettenius, Secretary of State, “United Nations Conference on International Organization, Provisions on Human Rights”, *US Department of State Bulletin*, vol. 12 (May 20, 1945), pp. 928–9 (emphasis added).
- 48 Ruth B. Russell, *A History of the United Nations Charter, The Role of the United States 1940–1945* (Washington, D.C.: The Brookings Institution, 1958), p. 324 (emphasis added).
- 49 Ibid.
- 50 Ibid., p. 289 and 323.
- 51 The Charter, Articles 13, 55, 62, 76.
- 52 Bolivia, for instance, also proposed that the Security Council, in addition to being empowered to investigate any dispute (art. 34), would have the power “to propose the means which it considers necessary and to determine the measures which will be chosen in order to prevent the continued existence of the dispute or situation from endangering international peace, security, and justice”. The United Nations Conference on International Organization, Commission III, Security Council, Committee 2 Peaceful settlement, Doc. 2017, III/2/A/3 (May 10, 1945), p. 180.
- 53 Ruth B. Russell, *A History of the United Nations Charter* (footnote 48), p. 657.
- 54 Katarina Mansson, “Reviving the ‘Spirit of San Francisco’: The Lost Proposals on Human Rights, Justice and International Law to the UN Charter”, *Nordic Journal of International Law*, vol. 76 (2007), pp. 226–229.
- 55 Ibid., pp. 233–234.
- 56 James Turpin, *The Best Prevention Tool we have: How the Universal Declaration of Human Rights – and the Treaties derived from it – help the United Nations Prevent Conflict*, United Nations Sabbatical Leave Programme 2018, p. 20 (emphasis added).
- 57 Russell, *A History of the United Nations Charter* (footnote 53), p. 780.
- 58 The United Nations Conference on International Organization, Commission I, Restricted, Vol VII, Doc. 762, I/2/53, (June 2, 1945), pp. 162–163, 168–169.
- 59 Katarina Mansson, *Reviving the ‘Spirit of San Francisco’* (footnote 54), p. 228. Text of the “Declaration of Essential Human Rights” is available from the author upon request.
- 60 *US Department of State Bulletin* (footnote 47), p. 929.
- 61 Among them were Uruguay, Bolivia, Peru, Syria, the Philippines, Egypt, Norway, South Africa and the Netherlands.
- 62 U Thant, *The Role of the Secretary-General. And the Concluding Remarks of the ‘Introduction to the Report of the Secretary-General on the Work of the Organization’* (New York, the United Nations, 1971), p. 8
- 63 United Nations Oral History Project, Transcript of interviews with Brian Urquhart 1984–1985, Interviewer: Leon Gordenker, May 30, 1984, “The Office of the Secretary-General”, p. 23 (emphasis added) (transcript only available at the Dag Hammarskjöld Library, United Nations Headquarters, New York).
- 64 Álvaro de Soto, Under-Secretary-General United Nations Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General to the Palestine Liberation Organization and the Palestinian Authority Envoy to the Quartet, *End of Mission Report*, May 2007, para. 106. See also Babbitt, “Conflict Resolution and Human Rights: The State of the Art” (footnote 16), p. 623.
- 65 Documents of the United Nations Conference on International Organization, San Francisco, 1945, Vol XI, Commission III, Security Council, Peaceful settlement, Doc 1088, III/8, (June 19, 1945), Commission III Security Council, p. 80.
- 66 Ibid. p. 83.
- 67 Ibid. p. 87.
- 68 Turpin, *The Best Prevention Tool we have* (footnote 56), p. 20.
- 69 See resolution 186 (S-2) of the General Assembly of 14 May 1948 on *Appointment and terms of reference of a United Nations Mediator in Palestine*, part II, para. 1, for the full mandate (emphasis added).
- 70 This anchored the work of Mediator firmly with the Security Council as well as with the General Assembly. Of relevance, the resolution directed the Mediator to conform his activities with the provisions of the resolution and with instructions that the Assembly or the Security Council may issue. However, the Mediator on Palestine has been referred to as a “subsidiary agency” by the General Assembly in the area of pacific settlement. See Pacific Settlement of Disputes in the United Nations, p. 15.
- 71 *Text of Suggestions presented by the United Nations Mediator on Palestine to the two Parties on 28 June 1948*, S/863, Part II, 3 July 1948, para. 5.
- 72 Ibid., para. 7. See also *Progress report of the United Nations Mediator of Palestine submitted to the Secretary-General for Transmission to the Members of the United Nations*, Part I Efforts of the Mediator, III. Résumé of the Negotiations, 16 September 1948 (United Nations, Paris), para. 5 (7).
- 73 S/863 (footnote 71), para. 9. See also *Progress report of the United Nations Mediator of Palestine* (footnote 72), para. 5 (9).
- 74 Howard Adelman and Elazar Barkan, *No Return, No Refuge: Rites and Rights in Minority Repatriation* (Columbia University Press, 2011), p. 203.
- 75 *Report of the United Nations Mediator on Palestine to the Security Council*, S/888, 12 July 1948, para 29. “The Jews objected to the deviations from the 29 November resolution, and particularly to the suggestions concerning the regulation of immigration and the status of Jerusalem. They offered no counter-suggestions, but urged a reconsideration of my ‘whole approach to the problem’. The Arabs offered counter-suggestions which incorporated, in outline, the basic tenets of the Arab position. These counter-suggestions, providing for a unitary state in the whole of Palestine, offered little or no compromise.”
- 76 *Resolution on the Palestinian question adopted at the three hundred and thirty-eight meeting of the Security Council*, S/902, 15 July 1948.
- 77 *Progress report of the United Nations Mediator of Palestine* (footnote 72), Part I The Mediation Effort, V Refugees, para. 3.
- 78 *Cablegram dated 1 August 1948 from the United Nations Mediator to the Secretary-General concerning Arab refugees*, S/948, 4 August 1948, p. 3.
- 79 *Progress report of the United Nations Mediator of Palestine* (footnote 72), Part I The Mediation Effort, V Refugees, para. 6.
- 80 <https://www.unrwa.org/newsroom/official-statements/bernadotte-his-legacy-palestine-refugees>
- 81 Adelman and Barkan, *No Return, No Refuge: Rites and Rights in Minority Repatriation* (footnote 74), p. 203.
- 82 194 (III). *Palestine – Progress Report of the United Nations Mediator*, A/RES/194 (III), 11 December 1948, para. 11.
- 83 Adelman and Barkan, *No Return, No Refuge: Rites and Rights in Minority Repatriation* (footnote 74), p. 203.
- 84 Gail J. Boling, “Palestinian Refugees and the Right of Return: An International Law Analysis”, *BADIL – Information & Discussion Brief*, No. 8, January 2001, see p. 3.
- 85 *Progress report of the United Nations Mediator of Palestine* (footnote 72), Part One, The Mediation Effort, Section VIII Conclusions, para. 3.
- 86 Ibid., para. 4 (i), (j).
- 87 <https://www.unrwa.org/newsroom/official-statements/bernadotte-his-legacy-palestine-refugees>
- 88 *Letter dated 4/9/72 from the United Nations Acting Mediator on Palestine to the Secretary-General transmitting a report on the present status of the armistice negotiations and the truce in Palestine*, S/1357, 26 July 1949, para. 5.
- 89 Ibid., III Conclusions, paras. 1 and 3. The Security Council in its resolution 73 of 11 August 1949 decided that all the functions of the Mediator in Palestine had been discharged and relieved the Acting Mediator from any further responsibility.
- 90 See, for instance, the *Armistice Agreement between Jordan and Israel*, S/1302, 4 April 1949, Article VI(6): “Wherever villages may be affected by the establishment of the Armistice Demarcation Line provided for in paragraph 2 of this Article, the inhabitants of such villages shall be entitled to maintain and be protected in their full rights of residence, property and freedom. In the event any of the inhabitants should decide to leave their villages they shall be entitled to take with them their livestock and other movable property and to receive without delay full compensation for the land which they have left.”
- 91 Security Council resolution 242, 22 November 1967, para. 3. This has been identified as one example of the Security Council exercising its powers under Article 33. See Christian Tomuschat, “Ch. VI Pacific Settlement of Disputes, Article 33”, in *The Charter of the*

United Nations (3rd ed): *A Commentary*, Vol. I, Bruno Simma and others, eds. (Oxford, Oxford University Press, 2012).

92 Fuentes-Julio and Ibrahim, *A Human Rights Approach to Conflict Resolution* (footnote 16), p. 268.

93 Ibid.

94 Ibid., p. 269. The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip states: “Subject to the provisions of this Agreement, the Palestinian Police and the Israeli military forces shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms of human rights and the rule of law and shall be guided by the need to protect the public, respect human dignity and avoid harassment.” (emphasis in original text).

95 Ibid. p. 270.

96 Bell, *Peace Agreements and Human Rights* (footnote 30), pp. 293–294.

97 See: <https://www.pbs.org/ralphbunche/peacemaker.html>

98 Husain Al-Baharna, “The Fact-Finding Mission of the United Nations Secretary-General and the Settlement of the Bahrain-Iran Dispute, May 1970”, *The International and Comparative Law Quarterly*, vol. 22, No. 3 (July 1973), p. 549.

99 Ibid., p. 546.

100 Briefly, Iran claimed to have exercised uninterrupted sovereignty over Bahrain since the pre-Islamic era, except for the period of Portuguese occupation from 1522–1602. The United Kingdom recognized Bahrain as a “sovereign state in special treaty relations” with Britain based on a series of treaties signed between the al-Khalifah clan of the Utubi tribe of Arabia (who invaded Bahrain in 1783). For an overview, see Roham Alvandi, “Mohammed Reza Pahlavi and the Bahrain Question, 1968–1970”, *The British*

Journal of Middle Eastern Studies, vol. 37, No. 2 (August 2020), pp. 159–177.

101 See Russell, *A History of the United Nations Charter* (footnote 53), pp. 810–1. Italicized text is the language as proposed by the USSR.

102 This position was likely influenced by US support for the principle of self-determination, and as famously advocated for by President Wilson in his Fourteen Points speech in 1918.

103 Human Rights Committee, *General Comment 12, Article 1* (Twenty-first session, 1984), HRI/GEN/1/Rev.1 (1994), p. 12, para. 1 (emphasis added).

104 “The amendments on human rights and fundamental freedoms are closely linked with the amendments establishing equal rights and self-determination of peoples as one of the fundamental purposes of the Organization. [...] the United States will continue to exert its full influence on behalf of the right of all peoples to govern themselves according to their own desires whenever they are prepared and able to assume the responsibilities of freedom as well as to enjoy its rights.”

105 As Packer notes, the challenge is “to find means of reconciling competing interests and aspirations”, and, drawing on the power of universal standards, notes that this “can be achieved through a concerned effort to ensure respect for the human rights of everyone everywhere” adding “creative pursuit of the manifold possibilities of accommodating diversity in the multicultural state should inform our contemporary understanding of the notion of self-determination, in particular a developed understanding of ‘internal self-determination’”. John Packer, “Making International Law Matter in Preventing Ethnic Conflict: A Practitioner’s Perspective”, *NYU Journal of International Law and Politics*, vol. 32 (2000), p. 720.

106 For an overview, see Sally Holt and John Packer, “Self-determination and peace processes; Pathways and stumbling blocks for conflict resolution”, *Accord*, No. 29 (September 2020), p. 55.

107 Max van der Stoep, “Reflections on the Role of the OSCE HCNM as an instrument of Conflict Prevention”, IFSH ed., *OSCE Yearbook 1999* (Baden-Baden, 2000), p. 386.

108 Al-Baharna, *The Fact-Finding Mission of the United Nations Secretary-General* (footnote 98), p. 544.

109 For an overview, see Alvandi, *Mohammed Reza Pahlavi and the Bahrain Question, 1968–1970* (footnote 100). As Alvandi puts it, “the substance of these long and torturous Anglo-Iranian negotiations focused on finding a face-saving formula for the Shah to abandon Bahrain without appearing to have colluded with Britain to surrender Iranian territory.” Ibid., p. 160.

110 Confidential, Order of Procedure/Draft Method of Operation, New York, 27 December 1969, S-0258-0001-0006, UN Archives.

111 *Report of the Personal Representative of the Secretary-General in charge of the Good Office Mission, Bahrain, S/9772* (30 April 1970), para. 3.

112 *Note by the Secretary-General, S/9726* (28 March 1970), p. 1 and p. 3 (emphasis added).

113 Cable from Bunche to Winspeare, 28 March 1970, no 1411. S-0370-0002-0013, UN Archives.

114 Cable from Bunche to Winspeare, 28 March 1970, no 1411. S-0370-0002-0013, UN Archives.

115 *Report of the Personal Representative of the Secretary-General* (footnote 111), paras. 24–26.

116 Cable dated 30 March 1970, Series 370, Box 2, File 9, Acc. 90/120, UN Archives (emphasis added).

117 Ibid, on consultations see paras. 28–41. It should of course be added that such consultations were facilitated by the small size of the Bahraini population at the time, an estimated 200,000 people (including 40,000 foreigners), out of which 60% under the age of 21. Series 370, Box 2, File 14, Acc. 96/120, UN Archives.

118 Ibid. para. 57.

119 Security Council resolution 278, 11 May 1970.

120 Al-Baharna, *The Fact-Finding Mission of the United Nations Secretary-General* (footnote 98), p. 551.

121 Ibid., p. 550.

122 Stanley Hoffmann, “Ralph Bunche: A Man of the World, But Never at Home”, *Foreign Affairs*, vol. 74, No. 1 (January/February 1995), p. 181.

123 Isak Svensson and Peter Wallensteen, *The Go-Between – Jan Eliasson and the Styles of Mediation* (Washington DC, USIP Press, 2010) p. 79.

124 For instance, the Security Council in 1986 condemned “heavy losses of human lives and considerable material damage and endangering international peace and security”. S/RES/588 (1986), 8 October 1986 (emphasis added).

125 It is believed that this was the second time that the Secretary-General formally invoked article 99 after Hammarskjöld did so in the context of the Congo in the 1960s. See United Nations Oral History Project, Transcript of interview with Amb. Ismat Kittani by James Sutterlin, Oct. 16, 1997, New York. Brian Urquhart recalls: “Waldheim brought the Iran-Iraq war to the Council because nobody else would and everybody said: ‘That’s very embarrassing for us. Why did you do that?’” United

Nations Oral History Project, Transcript of interview with Brian Urquhart, May 30, 1984, Interviewer: Leon Gordenker, p. 37.

126 For an overview of the conflict and the engagement by the United Nations, see Matthew J. Ferretti, “The Iran-Iraq War: United Nations Resolution of Armed Conflict”, *Villanova Law Review*, vol. 35, No. 1 (1990), p. 197.

127 Interview with Mr. Iqbal Riza, 9 December 2021. See also Svensson and Wallensteen, *The Go-Between – Jan Eliasson and the Styles of Mediation* (footnote 123), p. 57.

128 Svensson and Wallensteen, *The Go-Between – Jan Eliasson and the Styles of Mediation* (footnote 123), p. 57.

129 Ibid., p. 42 and p. 57. This approach was supported also by the new Secretary-General, Pérez de Cuéllar, in 1982.

130 S/14251, 11 November 1980.

131 It should be specified that Waldheim had received the agreement of the Council members on the appointment of Palme.

132 Interview with Jan Eliasson, 22 October 2021, Stockholm. See also Svensson and Wallensteen, *The Go-Between – Jan Eliasson and the Styles of Mediation* (footnote 123), p. 59.

133 See Ferretti, *The Iran-Iraq War* (footnote 126), pp. 213–215.

134 United Nations Oral History Project, Transcript of interview with Jan Eliasson by James Sutterlin, 9 November 1999, New York, p. 9. Bertrand Ramcharan recounts that Pérez de Cuéllar said that he had acted “on humanitarian ground” in “order to do something on the moral and inspirational power invested in the Secretary-General”. Bertrand G. Ramcharan, *The International Law and the Practice of Early-Warning and Preventive Diplomacy: The Emerging Global Watch* (Dordrecht,

The Netherlands: Martinus Nijhoff Publishers, 1991), pp. 81–82.

135 *Message dated 9 June 1984 from the Secretary-General addressed to the Presidents of the Islamic Republic of Iran and the Republic of Iraq, S/16611*, 11 June 1984. The Secretary-General stressed: “Deliberate military attacks on civilian areas cannot be condoned by the international community.”

136 *Letter dated 14 June 1984 from the Secretary-General to the President of the Security Council, S/16627*, 15 June 1984. On inspection reports, see for instance, S/16750, 19 September 1984.

137 Interview with Jan Eliasson, Stockholm, 22 October 2021.

138 Svensson and Wallensteen, *The Go-Between – Jan Eliasson and the Styles of Mediation* (footnote 123), p. 65.

139 Ibid., p. 59.

140 Interview with Iqbal Riza, 9 December 2021. See also United Nations Oral History Project, Transcript of interview with Jan Eliasson by James Sutterlin, 9 November 1999, New York, p. 9, and Ferretti, *The Iran-Iraq War* (footnote 126), p. 219.

141 United Nations Oral History Project, Transcript of interview with Jan Eliasson by James Sutterlin, 9 November 1999, New York, pp. 9–11. The Council met in consultations on 14 February 1986 at the request of the Secretary-General who in a statement had called for the cessation of hostilities which would make possible an investigation in the war zone where chemical weapons were alleged to have been used. *Report of the Mission dispatched by the Secretary-General to investigate allegations of the use of chemical weapons in the conflict between the Islamic Republic of Iran and Iraq – Note by the Secretary-General, S/17911*, 12 March 1986, para. 5.

- 142 Interview with Iqbal Riza, 26 November 2021.
- 143 Interview with Iqbal Riza, 9 December 2021.
- 144 *Report of the Mission dispatched by the Secretary-General to investigate allegations* (footnote 141), para. 13.
- 145 *Report of the mission dispatched by the Secretary-General to investigate allegations of the use of chemical weapons in the conflict between the Islamic Republic of Iran and Iraq* — Note by the Secretary-General, S/18852, 8 May 1987, para. 6.
- 146 S/RES/612 (1988).
- 147 Svensson and Wallensteen, *The Go-Between — Jan Eliasson and the Styles of Mediation* (footnote 123), p. 67.
- 148 *Report of the Mission dispatched by the Secretary-General to investigate allegations* (footnote 141), para. 2.
- 149 Internal document, S-0347-0008-0002, UN Archives.
- 150 *Ibid.*
- 151 *Ibid.*
- 152 Note for the Secretary-General from Mr. Diego Cordovez, 25 March 1985, S-0347-0008-0002, UN Archives.
- 153 *Report of the Mission dispatched by the Secretary-General to investigate allegations of the use of chemical weapons in the conflict between the Islamic Republic of Iran and Iraq* — Note by the Secretary-General, S/16433, 26 March 1984, para. 5.
- 154 Interview with Iqbal Riza, 9 December 2021.
- 155 United Nations Oral History Project, Transcript of interview with Jan Eliasson by James Sutterlin, 9 November 1999, New York, p. 35.
- 156 *Ibid.*
- 157 Ferretti, *The Iran-Iraq War* (footnote 126), pp. 242.
- 158 *Ibid.*, pp. 242–243.
- 159 United Nations Oral History Project, Transcript of interview with Jan Eliasson by James Sutterlin, 9 November 1999, New York, pp. 15–16.
- 160 Jan Eliasson, *Ord och Handling: Ett liv i diplomatins tjänst* (Albert Bonniers Förlag, ScandBook UAB, Lithuania, 2022), p. 289.
- 161 See *Letter dated 18 October 1991 from the Permanent Representative of El Salvador to the United Nations addressed to the Secretary-General*, A/46/551-S/23128, 19 October 1991, para. 1.
- 162 It was the November 1989 FMLN offensive that proved to be the turning point in this regard. Álvaro de Soto, “Ending Violent Conflict in El Salvador”, in *Herding Cats: Multiparty Mediation in a Complex World*, Chester A. Crocker, Fen Osler Hampson and Pamela R. Aall, eds. (Washington, DC., United States Institute of Peace, 1999), p. 356. This article offers an excellent overview of the UN-led peace process in El Salvador.
- 163 David Holiday and William Stanley, “Building the Peace: Preliminary Lessons from El Salvador”, in *Keeping the Peace: Conflict Resolution in the Twenty-First Century*, *Journal of International Affairs*, vol. 46, No. 2 (Winter 1993).
- 164 *Ibid.*, and interview with Álvaro de Soto, former United Nations Under-Secretary-General and Professor at Science Po, Paris, 13 December 2021.
- 165 *Central America: Efforts towards Peace*, S/RES/637, 27 July 1989, preamble. The Esquipulas II Agreements of 1987, outlining the principles by which the conflicts in Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua would be resolved, had emphasized democratization and respect for human rights as key components of the peace process in Central America.
- 166 Álvaro de Soto, “Ending Violent Conflict in El Salvador”, in *Herding Cats: Multiparty Mediation in a Complex World* (footnote 161), p. 363.
- 167 Interview, Álvaro de Soto, former Under-Secretary-General, Professor at Science Po, Paris, 13 December 2021.
- 168 Interview, Joaquín Villalobos, 8 March 2022.
- 169 *Ibid.*
- 170 For full text of the agreement, see A/44/971-S/21541, 16 August 1990.
- 171 Álvaro de Soto, “Ending Violent Conflict in El Salvador” in *Herding Cats: Multiparty Mediation in a Complex World* (footnote 161).
- 172 Interview with Álvaro de Soto, former Under-Secretary-General, Professor at Science Po, Paris, 13 December 2021.
- 173 See also Jesuit of Latin America, *El Salvador: UN Mediation and Civil Negotiations*, available at: <https://www.envio.org.ni/articulo/2926>
- 174 This also included FMLN signing up to common article 3 of the Geneva Conventions. Interview with Álvaro de Soto, former Under-Secretary-General, Professor at Science Po, Paris, 13 December 2021.
- 175 This also meant that the parties knew that they could no longer receive arms from their respective supporters (Cuba and US). Interview with Iqbal Riza, 26 November 2021.
- 176 An important factor is also the political support that Pérez de Cuéllar enjoyed from the members of the Security Council, notably the P5. It should be recalled that the P5 in 1986 jointly asked him to run for a second term. This was only the second time in the history of the United Nations that this occurred. Interview with Álvaro de Soto, former Under-Secretary-General, Professor at Science Po, Paris, 13 December 2021.
- 177 See also United Nations Oral History Project, Interview with Francesco Vendrell by Jean Krasno, 18 April 1996, New York, pp. 7–8. Vendrell notes that the “friends” played an important role in supporting the San José Agreement.
- 178 Teresa Whitfield, *A Crowded Field: Groups of Friends, the United Nations and the Resolution of Conflict*, An occasional paper of the Center on International Cooperation: Studies in Security Institutions, vol. 1 (June 2005), pp. 2–3.
- 179 S/RES/693 (1991), 20 May 1991, para. 2.
- 180 Interview with Álvaro de Soto, former Under-Secretary-General, Professor at Science Po, Paris, 13 December 2021.
- 181 Interview with Iqbal Riza, 26 November 2021.
- 182 Holiday and Stanley, *Building the Peace: Preliminary Lessons from El Salvador* (footnote 163), p. 11.
- 183 Interview with Iqbal Riza, 26 November 2021.
- 184 Interview with Álvaro de Soto, former Under-Secretary-General, Professor at Science Po, Paris, 13 December 2021. The preambular part of the Chapultepec Agreement stipulated that the agreements signed in San José, Mexico and New York form a whole with the Chapultepec Agreement.
- 185 Interview with Álvaro de Soto, former Under-Secretary-General, Professor at Science Po, Paris, 13 December 2021.
- 186 Holiday and Stanley, *Building the Peace: Preliminary Lessons from El Salvador* (footnote 163), p. 11.
- 187 *United Nations Guidance for Effective Mediation* (footnote 4), p. 11.
- 188 *Report of the Secretary-General*, S/22494, 16 April 1991, para. 15.
- 189 The New York Agreement of 25 September 1991, A/46/502-S/23082, 26 September 1991, Annex I, II (1).
- 190 Interview, Joaquín Villalobos, 8 March 2022.
- 191 A/46/664 - S/23501, 30 January 1992, Annex: Peace Agreement, Chapter I Armed Forces, I (b) Doctrinal Principles of the Armed Forces.
- 192 Interview with Álvaro de Soto, former Under-Secretary-General, Professor at Science Po, Paris, 13 December 2021.
- 193 *Ibid.*
- 194 Interview with Álvaro de Soto, former Under-Secretary-General, Professor at Science Po, Paris, 13 December 2021. On this issue specifically, see speech by de Soto at the conference *From War to Politics: International Conference on El Salvador's Peace Process*, Columbia University, 31 March 2016. Available at: <https://www.youtube.com/watch?v=ma899Gzpsag>
- 195 Interview with Álvaro de Soto, former Under-Secretary-General, Professor at Science Po, Paris, 13 December 2021.
- 196 *An Agenda for Peace: Preventive diplomacy, peacemaking and peace-keeping*, Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, A/47/277 - S/24111, 17 June 1992, paras. 55–59.
- 197 Conference for Security and Co-operation in Europe, CSCE Helsinki Document 1992, *The Challenges of Change*, Decision II, para. 3 (emphasis added).
- 198 Van der Stoel, *Reflections on the Role of the OSCE HCNM as an Instrument of Conflict Prevention* (footnote 107), p. 382.
- 199 Olivier A.J. Brenninkmeijer, “Creating Conflict Prevention: Negotiating between Preconditions and Influences”, IFSH, ed., *OSCE Yearbook 2012* (Baden-Baden, 2013), p. 220.
- 200 <https://www.osce.org/human-rights>
- 201 CSCE Helsinki Document 1992, *The Challenges of Change* (footnote 196), para. 8.
- 202 Renata Summa and Monica Herz, “Regional organization, human rights, and conflict resolution” in Fuentes-Julio and Drummond, eds., *Human Rights and Conflict Resolution: Bridging the Theoretical and Practical Divide* (footnote 16), p. 115. As conceptualized by van der Stoel, “as a rule, peace and stability are best served by ensuring that persons belonging to national minorities can effectively enjoy their rights.” Max van der Stoel, “The Role of the OSCE High Commissioner in Conflict Prevention” in *Herding Cats: Multiparty Mediation in a Complex World* (footnote 161), p. 73.
- 203 Van der Stoel, *Reflections on the Role of the OSCE HCNM as an Instrument of Conflict Prevention* (footnote 107), p. 381.
- 204 Max van der Stoel, “The Heart of the Matter — The Human Dimension of the OSCE”, *Helsinki Monitor*, vol. 6, No. 3 (1995), pp. 29–30.
- 205 *Ibid.*, p.23.
- 206 Babbitt, *Conflict Resolution and Human Rights: The State of the Art* (footnote 16), p. 623.
- 207 Interviews with Ambassador Knut Vollebaek, 26 January 2022, and Ambassador Lamberto Zannier, 27 December 2021.

- 208 Interview, Ambassador Knut Vollebaek, 26 January 2022.
- 209 Interview, Christophe Kamp, Director of the office of the HCNM, 10 February 2022.
- 210 Interview, Professor John Packer, 26 January 2022.
- 211 Interview, Ambassador Knut Vollebaek, 26 January 2022.
- 212 Interview, Ambassador Knut Vollebaek, 26 January 2022.
- 213 Interview, Ambassador Lamberto Zannier, 27 December 2021.
- 214 Interview, Professor John Packer, 26 January 2022. “The HCNM has to be fundamentally correct in his analysis of the situation and in his translation of norms in seeking solutions”. Packer, *Making International Law Matter in Preventing Ethnic Conflict* (footnote 105), p. 717.
- 215 Interview, Christophe Kamp, Director of the office of the HCNM, 10 February 2022.
- 216 Packer, *Making International Law Matter in Preventing Ethnic Conflict* (footnote 105), p. 719.
- 217 This case study is also singled out in the *Mediation and Dialogue Facilitation in the OSCE: Reference Guide* (OSCE Conflict Prevention Center), p. 18.
- 218 Angela Kachuyevski, “Possibilities and Limitations of Preventive Action: The OSCE High Commissioner on National Minorities in Ukraine, *International Negotiation*, vol. 17, No. 3 (2012), p. 383.
- 219 The Permanent Committee (later Permanent Council) of the CSCE agreed to the establishment of the Mission further to the determination of its Permanent Committee (later Council) of the situation in Crimea as a “potential threat to the CSCE Principles”. John Packer, “Autonomy within the OSCE: The Case of Crimea” in Markku Suksi, ed., *Autonomy: Applications and Implications* (The Hague: Boston, Kluwer Law International, 1998), p. 307.
- 220 Van der Stoel made this suggestion in a letter to the Foreign Minister of Ukraine dated 15 May 1994. CSCE Communication no. 2415/94/L.
- 221 P. Terrence Hopmann, “The OSCE’s Contrasting Roles in Managing the Ukraine/Crimea Crises in 1992–96 and 2014–15”, in IFSH, ed., *OSCE Yearbook 2015* (Baden-Baden, 2016), p. 281.
- 222 Walter A. Kemp, ed., *Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities*, OSCE (2001), p. 220.
- 223 Kachuyevski, *Possibilities and Limitations of Preventive Action* (footnote 217), p. 397. See further below on the importance of the HCNM’s Recommendations and Guidelines.
- 224 Ibid.
- 225 Kemp, *Quiet Diplomacy in Action* (footnote 221), pp. 228–229.
- 226 Kachuyevski, *Possibilities and Limitations of Preventive Action* (footnote 217), p. 399.
- 227 Namely, the June 1992 “Law on Ukraine on the Demarcation of Power between the Organs of State Power of Ukraine and the Republic of Crimea”, which had never entered into force. Packer, *Autonomy within the OSCE: The Case of Crimea* (footnote 218) p. 309.
- 228 Packer, *Autonomy within the OSCE: The Case of Crimea* (footnote 218), p. 309.
- 229 Ibid., p. 310.
- 230 Letter from the HCNM to Foreign Minister of Ukraine, Hennady Udovenko, 5 April 1995. Ref. 500/R/L.
- 231 Kemp, *Quiet Diplomacy in Action* (footnote 221), p. 225.
- 232 Article 3 of the Crimean Constitution sets out nine fundamental principles and guarantees of the ARC, one of which is “respect for and securing human and civil rights and freedoms”. Chapter 3 on *Securing Rights and Freedoms of Ukrainian Nationals and Rights of Ethnic Groups* stipulates that “the principal objective of the authorities of the ARC, the bodies of local self-government and the functionaries thereof shall be to secure the exercise of human and civil rights and freedoms and worthy living conditions of citizens”.
- 233 Article 11: “The State promotes the consolidation and development of the Ukrainian nation, of its historical consciousness, traditions and culture, and also the development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine.” Interview, Professor John Packer, 4 January 2022.
- 234 Hopmann, *The OSCE’s Contrasting Roles in Managing the Ukraine/Crimea Crises* (footnote 220), p. 283.
- 235 Kachuyevski, *Possibilities and Limitations of Preventive Action* (footnote 217), p. 398.
- 236 Interview, Professor John Packer, 26 January 2022.
- 237 Interview, Ambassador Knut Vollebaek, 26 January 2022.
- 238 Interview, Ambassador Lamberto Zannier, 27 December 2021. Nine such recommendations have been adopted since 1992: On education rights (1996); linguistic rights (1998); effective participation in public life (1999); Use of Minority Languages in the Broadcast Media (2003); Policing in Multi-Ethnic Societies (2006); Inter-State Relations (2006); Integration of Diverse Societies (2012); Access to Justice (2017); Media in the Digital Age (2019).
- 239 Interview, Ambassador Knut Vollebaek, 26 January 2022.
- 240 Noemi Nagy, “Language Rights of Minorities in the Areas of Education, the Administration of Justice and Public Administration: European Developments in 2017”, *European Yearbook of Minority Issues*, vol. 16 (2017), p. 77.
- 241 Ibid, p. 78.
- 242 See home page of the South East European University, available at <https://www.seeu.edu.mk/en/about/history>
- 243 Interview, Ambassador Lamberto Zannier, 27 December 2021.
- 244 *Learning from the Indonesia-Aceh peace process*, Policy Brief 2008, Conciliation Resources, p. 2. Available at: <https://www.c-r.org/resource/learning-indonesia-aceh-peace-process-policy-brief>.
- 245 Also called Aceh-Sumatra National Liberation Front (ASNLF).
- 246 According to GAM, the conflict stemmed from the 1873 Dutch invasion of the ‘State of Aceh-Sumatra’ and was perpetrated by ‘illegal transfer of sovereignty’ in 1949 from the ‘old Dutch colonialists to the new, Javanese colonialists’. For an overview of the historical context, see Judith Large and Aguswandi, “Introduction”, and Michelle Ann Miller, “The conflict in Aceh: context, precursors and catalysts”, in Aguswandi and Judith Large, eds., “Reconfiguring politics: the Indonesia-Aceh peace process”, *Accord, Issue 20* (Conciliation Resources, 2008).
- 247 Miller, *The conflict in Aceh: context, precursors and catalysts* (footnote 246), p. 14.
- 248 Robert M. Heiling, “Conflict resolution in Aceh in Light of Tack One and a Half Diplomacy”, *ASEAS – Austrian Journal of South-East Asian Studies*, vol. 1, No. 2 (2008), p. 178.
- 249 Svensson and Wallenstein, *The Go-Between – Jan Eliasson and the Styles of Mediation* (footnote 123), p. 23.
- 250 Ibid.
- 251 Konrad Huber, “Aceh’s arduous journey to peace”, in Aguswandi and Large, eds., *Reconfiguring politics* (footnote 246), p. 18.
- 252 James K. Sebenius and Alex Green, “Everything or Nothing: Martti Ahtisaari and the Aceh Negotiations (A), *Harvard Business School Case 911-040* (December 2010), p. 3. The Aceh Reintegration Board in 2007 estimated the number to be some 33,000. Faisal Hadi, “Human rights and justice in Aceh, the long and winding road”, in Aguswandi and Large, eds., *Reconfiguring politics* (footnote 246), p. 66.
- 253 Heiling, *Conflict resolution in Aceh in Light of Tack One and a Half Diplomacy* (footnote 248), p. 174.
- 254 “Delivering peace for Aceh, an interview with President Martti Ahtisaari”, in Aguswandi and Large, eds., *Reconfiguring politics* (footnote 246), p. 23. This meant that neither party could claim any victory during the process, which also implied no engagement with the media.
- 255 Katri Merikallio and Tapani Ruokanen, *The Mediator: A Biography of Martti Ahtisaari* (C Hurst & Co Publishers Ltd, 2015) p. 303.
- 256 It is important to recall that the TNI received merely 30% of its operational revenues from the State, and thus retained a broad network of income generating connections to politicians and businesses who had felt threatened by resource-rich Aceh gaining self-governing status. Sebenius and Green, *Everything or Nothing (A)* (footnote 252), p. 4.
- 257 Interview, Anonymous, 21 December 2021.
- 258 Antje Herrberg, “The Brussels ‘backstage’ of the Aceh peace process”, in Aguswandi and Large, eds., *Reconfiguring politics* (footnote 246), p. 34. It should be noted that the five ASEAN countries that participated in the AMM — Brunei, Malaysia, the Philippines, Singapore and Thailand — did so in their individual capacities, and not as representing ASEAN.
- 259 Sebenius and Green, *Everything or Nothing (A)* (footnote 251), p. 8.
- 260 “Delivering peace for Aceh, an interview with President Martti Ahtisaari”, in Aguswandi and Large, eds., *Reconfiguring politics* (footnote 246), p. 24. Ahtisaari has described his mediation style as follows: “If the mediator does know what he is aiming for, you can’t get anywhere.” He also had an “exceptional capacity to create an atmosphere which gets people to agree to a common goal”. Merikallio and Ruokanen, *The Mediator: A Biography of Martti Ahtisaari* (footnote 255), pp. 303, 319.
- 261 M. Nur Djulin and Nurdin Abdul Rahman, “The Helsinki negotiations”, in Aguswandi and Large, eds., *Reconfiguring politics* (footnote 246), p. 29.
- 262 Edward Aspinall, *Peace without Justice? The Helsinki peace process in Aceh*, Centre for Humanitarian Dialogue (April 2008), pp. 16–18, and Faisal Hadi, “Human rights and justice in Aceh, the long and winding road”, in Aguswandi and Large, eds., *Reconfiguring politics* (footnote 246).
- 263 Faisal Hadi, *Human rights and justice in Aceh* (footnote 262), p. 67.
- 264 Interview with Leena Avonius, 24 January 2022.
- 265 Aspinall, *Peace without justice?* (footnote 262), p. 17.
- 266 Interview, Anonymous, 21 December 2021; Interview, Leena Avonius, 24 January 2022; and James K. Sebenius and Alex Green, “Everything or Nothing: Martti Ahtisaari and the Aceh

- Negotiations (B), *Harvard Business School Case 911-040* (December 2010), p. 8.
- 267 Sebenius and Green, *Everything or Nothing (B)* (footnote 266), p. 2.
- 268 *Ibid.*, p. 4.
- 269 *Ibid.*, p. 5.
- 270 Interview, Meeri-Maria Jarva, 14 January 2022.
- 271 *Ibid.*
- 272 Interview, Anonymous, 21 December 2021. See further below in this section and provisions 2.2 and 2.3 of the MOU. Also, Aspinall comments on this issue that there was little discussion on the TRC and the Court. Instead, “there was an early understanding from both parties that these points would be included in the MOU. This consensus was arrived at without much resistance or even discussion, again because both institutions largely accorded with the Indonesian government position and did not expand or contravene existing justice provisions.” Aspinall, *Peace without justice?* (footnote 262), p. 18.
- 273 Merikallio and Ruokanen, *The Mediator: A Biography of Martti Ahtisaari* (footnote 255), p. 301.
- 274 *Ibid.*, p. 301.
- 275 Sebenius and Green, *Everything or Nothing (B)* (footnote 266), p. 7.
- 276 Interview, Meeri-Maria Jarva, 14 January 2022.
- 277 Merikallio and Ruokanen, *The Mediator: A Biography of Martti Ahtisaari* (footnote 255), p. 301.
- 278 Martti Ahtisaari, “What is a Good Mediator?” Available at: <https://www.youtube.com/watch?v=OmnA3lVDItQ> (into 8 min)
- 279 Merikallio and Ruokanen, *The Mediator: A Biography of Martti Ahtisaari* (footnote 255), p. 320.
- 280 Memorandum of Understanding between the Government of Indonesia and GAM, 15 August 2005, Section 2 on Human Rights.
- 281 Faisal Hadi in Aguswandi and Large, eds., *Reconfiguring politics* (footnote 246), p. 69.
- 282 Faisal Hadi in Aguswandi and Large, eds., *Reconfiguring politics* (footnote 246), p. 68.
- 283 Interview, Leena Avonius, 24 January 2022.
- 284 Provision 5.2 (d).
- 285 Kirsten Schulze, A sensitive mission: monitoring Aceh’s agreement, in Aguswandi and Large, eds., *Reconfiguring politics* (footnote 246), p. 39.
- 286 See Annex 3, Council of the European Union, *2020 Concept of EU Mediation Policy* (Brussels, 11 December 2020), Principles (a) EU as a value-based actor and (h) Human Rights.
- 287 Interview, Anonymous, 21 December 2021.
- 288 Delivering peace for Aceh, an interview with President Martti Ahtisaari, in Aguswandi and Large, eds., *Reconfiguring politics* (footnote 246), p. 24.
- 289 Interview, Anonymous, 21 December 2021.
- 290 “INDONESIA: Focus Discussion and Sharing with all Commissioners of the Aceh TRC”; <http://www.humanrights.asia/news/ahrc-news/AHRC-ANM-010-2020/>.
- 291 See in particular Guiding Principle 10 on “Coherence with ECOWAS and International Norms” in *ECOWAS Mediation Guidelines*, developed and published by ECOWAS Commission in partnership with the CMI, February 2018, p. 57. See Annex 4.
- 292 *Ibid.* See also *2020 Concept of EU Mediation Policy* (footnote 287, Annex 3), Principles, (a) EU as a value-based actor and (h) Human Rights.
- 293 ECOWAS Press Release of 15 July 2015. See: <https://ecowas.int/ecowas-validates-mediation-interventions-guidelines/>
- 294 Interview, Mahamane Cissé-Gouro, Director of the Human Rights Council and Treaty Mechanisms Division, OHCHR, 18 January 2022, Geneva.
- 295 See in particular article 25 on Conditions for Application of the 1999 Protocol on the Mechanism. For an overview of the evolution of ECOWAS, see Gilles Olakounlé Yabi, *The Role of ECOWAS in Managing Political Crisis and Conflict: The Cases of Guinea and Guinea-Bissau* (Friedrich Ebert Stiftung, 2010), pp. 6–7.
- 296 Interview, Ngozi Amu, 2 February 2022.
- 297 Interview, OHCHR official, 19 January 2022, Geneva.
- 298 Sascha Pichler Fong and Adam Day, *UN Preventive Diplomacy in the 2008–10 Crisis in Guinea*, UN University-CPR, UN Preventive Diplomacy, April 2018, p. 11.
- 299 Pichler and Fong, *UN Preventive Diplomacy in the 2008–10 Crisis in Guinea* (footnote 298), p. 8.
- 300 Interview, Mahamane Cissé-Gouro, Director of the Human Rights Council and Treaty Mechanisms Division, OHCHR, 18 January 2022, Geneva.
- 301 Interview, Said Djinnit, Former AU Commissioner for Peace and Security, former Special Representative and Special Envoy of the United Nations Secretary-General for West Africa and for the Great Lakes region, respectively, 23 February 2022. The other two key positions requested by SRSG Djinnit were on elections and mediation. The position was Senior Adviser on Governance, Rule of Law and Human Rights.
- 302 Interview, OHCHR official, 19 January 2022, Geneva.
- 303 2008 Report, Activities and Results, OHCHR p. 95, https://www.ohchr.org/Documents/Press/OHCHR_Report_2008.pdf
- 304 Yabi, *The Role of ECOWAS in Managing Political Crisis and Conflict* (footnote 295), p. 45.
- 305 The Commission of Inquiry confirmed 156 persons who were killed or who disappeared; at least 109 women subjected to rape and other sexual violence (several who died of their wounds), and hundreds of other cases of torture or other cruel, inhuman or degrading treatment. *Report of the International Commission of Inquiry*, S/2009/693, p. 2.
- 306 Pichler and Fong, *UN Preventive Diplomacy in the 2008–10 Crisis in Guinea* (footnote 298), p. 3.
- 307 “ECOWAS condemns the acts of repression in Guinea” Press Release N°096/2009, Abuja, 29 September 2009. The request was supported by the ICG-G. See Yabi, *The Role of ECOWAS in Managing Political Crisis and Conflict* (footnote 295), p. 47.
- 308 Forces Vives was not a single political opposition group but represented a conglomerate of civil society organizations and opposition parties.
- 309 Pichler and Fong, *UN Preventive Diplomacy in the 2008–10 Crisis in Guinea* (footnote 298), p. 3.
- 310 S/2009/693, para. 2. The consent of the Government was obtained in an exploratory mission by ASG Menkerios, OHCHR, OLA and UNOWAS to Conakry and the region from 16–20 October.
- 311 Interview, Said Djinnit, former AU Commissioner for Peace and Security, former Special Representative and Special Envoy of the United Nations Secretary-General for West Africa and for the Great Lakes region, respectively, 23 February 2022.
- 312 *Ibid.*
- 313 Pichler and Fong, *UN Preventive Diplomacy in the 2008–10 Crisis in Guinea* (footnote 298), p. 6.
- 314 S/2009/693, para. 266. On recommended ICC referral, see para. 278 in conjunction with Section IV, B. Individual responsibility for violations of international criminal law.
- 315 Pichler and Fong, *UN Preventive Diplomacy in the 2008–10 Crisis in Guinea* (footnote 298), p. 6.
- 316 *Ibid.*, p. 7.
- 317 Charles T. Call, *UN Mediation and the Politics of Transition after Constitutional Crises*, International Peace Institute (Fall 2012), pp. 17–18.
- 318 Yabi, *The Role of ECOWAS in Managing Political Crisis and Conflict* (footnote 295), p. 48.
- 319 Interview, Said Djinnit, former AU Commissioner for Peace and Security, former Special Representative and Special Envoy of the United Nations Secretary-General for West Africa and for the Great Lakes region, respectively, 23 February 2022.
- 320 Call, *UN Mediation and the Politics of Transition after Constitutional Crises* (footnote 317), p. 17 and as confirmed by interviews.
- 321 *Ibid.*, p. 2.
- 322 “The Commission recommends (a) (ii) that the OHCHR should monitor the situation in Guinea, at least in 2010 during which the country is likely to remain unstable, by an appropriately significant presence, in both quantitative and qualitative terms, to serve as a deterrent to potential violations of international law.” S/2009/693, para. 267.
- 323 United Nations Human Rights, *OHCHR Report 2011*, p. 209.
- 324 United Nations Human Rights, *UN Human Rights Report 2020*, p. 242.
- 325 The transitional Constitution of May 2010 set out that legislative elections be held six months after the announcement of the Presidential elections. Said Djinnit, *Le dialogue à tout prix: Au coeur de la crise politique de 2013 en Guinée* (Presses Universitaires de Louvain, 2022), p. 23. See also OHCHR Guinea 2014 report, A/HRC/25/44, paras. 2–5.
- 326 Interview, Senior United Nations official, 16 February 2022.
- 327 Djinnit, *Le dialogue à tout prix: Au coeur de la crise politique de 2013 en Guinée* (footnote 326), p. 13.
- 328 Interview, Said Djinnit, former AU Commissioner for Peace and Security, former Special Representative and Special Envoy of the United Nations Secretary-General for West Africa and for the Great Lakes region, respectively, 23 February 2022.
- 329 Interview, Andrea Ori, 1 March 2022 and Interview, Senior United Nations Official, 16 February 2022.
- 330 Interview, Senior United Nations Official, 16 February 2022.
- 331 Interview, Andrea Ori, 1 March 2022.
- 332 UNOWA changed name to UNOWAS to include Sahel in its mandate of 2016.
- 333 *Proposed mandate for the United Nations Office for West Africa and the Sahel*, S/2020/85, Objective 4: To “provide support for the enactment of resolutions and frameworks of action pertaining to respect for human rights in conflict prevention and

conflict management initiatives in West Africa and the Sahel”.

334 For example, human rights training for the ECOWAS Council of the Wise.

335 Interview, Senior United Nations Official, 16 February 2022.

336 UN High Commissioner for Human Rights, *Report from OHCHR Fact-finding Mission to Kenya*, 6–28 February 2008.

337 The prompt reaction by the AU has been traced to an increasing political support for the principle outlined of the AU Constitutive Act that empowers the AU to intervene in Member States in situations of war crimes, genocide, and crimes against humanity. African Union, *Back from the Brink, The 2008 Mediation Process and Reforms in Kenya*, The Office of the AU Panel of Eminent African Personalities, p. 21.

338 *Ibid.*, pp. 26–27.

339 *Report from OHCHR Fact-finding Mission to Kenya* (footnote 337), p. 5.

340 Interview, OHCHR official, 19 January 2022, Geneva. See also the African Union, *Back from the Brink* (footnote 337), p. 33. “The Panel made provision for consulting experts during the negotiation. Expert inputs would help to inform the negotiators and cut through protracted arguments; they also depoliticized discussions, and could identify solutions to intractable challenges. They became an important element of the Panel’s approach.”

341 African Union, *Back from the Brink* (footnote 338), p. 30.

342 *Ibid.*, p. 25.

343 The four points were:

(i) Immediate actions to stop the violence and restore fundamental rights and liberties; (ii) Immediate measures to address the humanitarian crisis, and promote reconciliation, healing and restoration; (iii) How to overcome

the political crisis; (iv) Long-term issues and solutions. These included: land reform; poverty and inequality; unemployment, particularly among youth; consolidating national cohesion and unity; preventing impunity and promoting transparency and accountability; and constitutional and institutional reform. African Union, *Back from the Brink* (footnote 338), p. 35.

344 Renata Segura and Delphine Mechoulan, *Made in Havana: How Colombia and the FARC Decided to End the War*, International Peace Institute (February 2017), p. 1.

345 Interview, mediation expert, 20 January 2022.

346 Interview, Jonathan Powell, Director of Inter Mediate, 25 February 2022.

347 Sandra Borda and Martha Gutiérrez, “Between peace and justice: The role of human rights norms in Colombia’s peace process”, in Fuentes-Julio and Drummond, eds., *Human Rights and Conflict Resolution: Bridging the Theoretical and Practical Divide* (footnote 16), pp. 222–223.

348 Kimberly Inksater and Paula Jiménez, *The Organization of American States Mission to support the peace process in Colombia*, IDEA (2016), p. 14.

349 Interview, Christian Salazar Volkmann, Director, Field Operations and Technical Cooperation Division, OHCHR, 19 January 2022, Geneva.

350 Dag Nylander, Rita Sandberg and Idun Tvedt, *Designing peace: the Colombian peace process*, NOREF (February 2018), p. 3.

351 Interview, Dag Nylander, 16 February 2022.

352 Interview, Jonathan Powell, Director of Inter Mediate, 25 February 2022, Berlin. See also John Carlin, “Gunslingers for peace”, *El Pais*, 27 September 2016.

353 Preamble, *General Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace*, signed on 26 August 2012, between the Government of Colombia and the Revolutionary Armed Forces of Colombia–People’s Army (FARC-EP).

354 See Section 1 of the *Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace*, signed on 24 November 2016, between the Government of Colombia and the Revolutionary Armed Forces of Colombia–People’s Army (FARC-EP).

355 *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, A/HRC/16/22, para. 7, and Kristian Herbolzheimer, *Innovations in the Colombian peace process*, NOREF Report (June 2016), p. 4.

356 Segura and Mechoulan, *Made in Havana* (footnote 344), p. 13.

357 *Ibid.*, p. 10. Overall, rights violations were a serious evidence of the legitimacy gaps in Colombia. Inksater and Jiménez, *The Organization of American States Mission to support the peace process in Colombia* (footnote 348), p. 14.

358 Christian Salazar Volkmann, “Evaluating the Impact of Human Rights Work: The Office of the United Nations High Commissioner for Human Rights and the Reduction of Extrajudicial Executions in Colombia”, *Journal of Human Rights Practice*, vol. 4, No. 3 (2012), pp. 409, 454.

359 A/HRC/16/22, paras. 25–27.

360 *Ibid.*, para. 107.

361 Interview, Christian Salazar Volkmann, Director, Field Operations and Technical Cooperation Division, OHCHR, 19 January 2022, Geneva.

362 *Ibid.*

363 Interview, Todd Howland, Chief, Development, Economic, Social Rights Branch, OHCHR, 29 December 2021. In 2012, OHCHR Colombia was headquartered in Bogotá with thirteen suboffices and a total of 66 staff. *OHCHR 2012 Annual Report*, p. 219.

364 Interview, Todd Howland, Chief, Development, Economic, Social Rights Branch, OHCHR, 29 December 2021.

365 *Ibid.*

366 Another key United Nations protection actor, the SRSG on Children and Armed Conflict, also travelled to Havana in 2015 to discuss child protection issues with FARC. In February 2016, FARC announced its decision to end child recruitment.

367 Segura and Mechoulan, *Made in Havana* (footnote 344), p. 20. See also p. 19 on other trust-building activities, including technical expertise.

368 This informal interaction with the parties helped build trust and “opened the door for the UN to be more present”. *Ibid.*, p. 20.

369 Interview, Fabrizio Hochschild, 9 March 2022.

370 *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, A/HRC/28/3/Add/3, para. 7.

371 First, victims could send proposals directly to either delegation through email or regular mail. Secondly, victims were invited to participate in a number of events around the country. Third, direct testimony in Havana. Jennifer Easterday, “Inclusion, Justice, and Peace in Colombia”, in Carsten Stahn and Jens Iverson, eds., *Just Peace After Conflict: Jus Post Bellum and the Justice of Peace* (Oxford, Oxford University Press, 2020), p. 336. In total, some 66,000 proposals on the different agenda items.

372 See Segura and Mechoulan, *Made in Havana* (footnote 344), p. 21 and Herbolzheimer, *Innovations in the Colombian peace process* (footnote 355), p. 4.

373 Interview, Fabrizio Hochschild, 9 March 2022.

374 Interview, Fabrizio Hochschild, 9 March 2022, and Segura and Mechoulan, *Made in Havana* (footnote 344), p. 21.

375 The Colombian Government is yet to issue a public apology.

376 Ted Piccone, *Peace with Justice: The Colombian Experience with Transitional Justice*, Foreign Policy (Brookings, 2019), p. 10.

377 Easterday, *Inclusion, Justice, and Peace in Colombia* (footnote 371), p. 330.

378 *Ibid.*, p. 340. In addition, Colombia is probably the first country to ever address LGBTI rights in a peace negotiation.

379 Venezuela and Chile were designated “accompanying countries”, representing ideological balance vis-à-vis the parties. All four countries provided technical and financial assistance, moral support, visibility and protection for the peace initiative.

380 Nylander, Sandberg and Tvedt, *Designing peace: the Colombian peace process* (footnote 350), p. 2. Fidel Castro had publicly called on FARC-EP to disarm and enter politics.

381 Segura and Mechoulan, *Made in Havana* (footnote 344), p. 11. Both countries have been credited for much of the success of the peace process.

382 Interview, Dag Nylander, 16 February 2022.

383 Nylander, Sandberg and Tvedt, *Designing peace: the Colombian peace process* (footnote 350), p. 6.

384 Segura and Mechoulan, *Made in Havana* (footnote 344), p. 17.

385 *Ibid.*

386 Nylander, Sandberg and Tvedt, *Designing peace: the Colombian peace process* (footnote 350), p. 6.

387 *Annual report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, A/HRC/31/3/Add.2, para. 8.

388 Easterday, *Inclusion, Justice, and Peace in Colombia* (footnote 371), pp. 337–338; Borda and Gutiérrez, *Between peace and justice* (footnote 347), pp. 225–237, for the details on the SJP and the ISTJR.

389 Interview, Dag Nylander, 16 February 2022.

390 Easterday, *Inclusion, Justice, and Peace in Colombia* (footnote 371), supra, p. 337.

391 Herbolzheimer, *Innovations in the Colombian peace process* (footnote 356), p. 4.

392 Interview, Dag Nylander, 16 February 2022. Appended to the UN Special Representative’s signature of the Lomé Agreement were the words: “The United Nations holds the understanding that the amnesty and pardon ... shall not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international law”.

393 Borda and Gutiérrez, *Between peace and justice* (footnote 347), p. 231.

394 Herbolzheimer, *Innovations in the Colombian peace process* (footnote 356), p. 4.

395 A/HRC/31/3/Add.2 (footnote 388), para. 8.

396 Interview, Dag Nylander, 16 February 2022.

397 Borda and Gutiérrez, *Between peace and justice* (footnote 347), p. 232. “[T]he Prosecutor of the ICC sent a letter to the government in June 2013 regarding the

Legal Framework for Peace and clarifying that he was opposed to the possible suspension of sentences but recognized that in certain transitional contexts, reducing the penalty is justified, provided there is demobilization, disarmament, recognition and guarantees of non-repetition, as well as a ban on participation in public life.”

398 Interview, Dag Nylander, 16 February 2022.

399 James Stewart, Deputy Prosecutor of the ICC, “Transitional Justice in Colombia and the Role of the International Criminal Court”, at Conference organized by: Universidad del Rosario, El Tiempo, Cyrus R. Vance Center for International Justice, Hanns Seidel Foundation, United Nations in Colombia, International Center for Transitional Justice and Coalition for the International Criminal Court. Bogota, Colombia, 13 May 2015.

400 Interview, Fabrizio Hochschild, 9 March 2022.

401 Press Release of 28 October 2021, ICC Prosecutor, available at: <https://www.icc-cpi.int/Pages/item.aspx?name=pr1623>

402 Easterday, *Inclusion, Justice, and Peace in Colombia* (footnote 371), pp. 332–333.

403 Interview, Tom Koenigs, 23 February 2022, Berlin.

404 Interview, Jonathan Powell, Director of Inter Mediate, 25 February 2022, Berlin.

405 Piccone, *Peace with Justice – The Colombian Experience with Transitional Justice* (footnote 376), p. 2.

406 Interview, Todd Howland, Chief, Development, Economic, Social Rights Branch, OHCHR, 29 December 2021.

407 UN News, 26 October 2016.

408 Interview, Zeid Ra’ad al Hussein, President and Chief

Executive Officer of International Peace Institute, 21 April 2022.

409 OHCHR Press Release, High Commissioner Zeid Hails Peace Accord in Colombia, 29 September 2016. See: <https://www.ohchr.org/EN/NewsEvents/Pages/ZeidinColombia.aspx>

410 For instance, OHCHR provides technical advice to the SJP that ensure its procedures comply with international human rights law, including on victims’ participation, protection of archives and restorative justice. A/HRC/43/3/Add.3, para 32.

411 Interview, former senior UN official, 18 February 2022. Echoed by Tom Koenigs in interview on 23 February 2022.

412 Interview, Tom Koenigs, 23 February 2022, Berlin.

413 See the most recent annual report on Colombia by the High Commissioner, A/HRC/43/3/Add.3, 8 May 2020.

414 As emphasized by High Commissioner Zeid at the signing of the peace agreement, 90 percent of the 110 employees of OHCHR Colombia and its 13 offices across the country are Colombians.

415 Interview, Nicholas Haysom, SRSG for South Sudan and Head of UNMISS, 5 April 2022.

416 Interview, Jeffrey Feltman, 18 February 2022.

417 Interview, Álvaro de Soto, former USG, Professor at Science Po, Paris, 13 December 2021.

418 Interview, Senior United Nations Official, 15 February 2021.

419 Interview, United Nations Official, 16 February 2021.

420 Interview, representative of a non-official mediation organization, 12 February 2022.

421 Interview, Senior United Nations Official, 15 February 2021.

422 Interview, United Nations Official, 19 January 2022.

423 Interview, Hilde F. Johnson, Senior Adviser, European Institute for Peace, Brussels, and former SRSG and head of UNMISS in South Sudan (2011–2014), 26 November 2021. See page 10.

424 Interview, Nicholas Haysom, SRSG for South Sudan and Head of UNMISS, 5 April 2022, and interview, mediation expert, 20 January 2022.

425 Interview, Katia Papagianni, 19 January 2022. For an in-depth analysis on this, see Katia Papagianni, “Human rights issues and dilemmas in contemporary peace mediation”, in Fuentes-Julio and Drummond, eds., *Human Rights and Conflict Resolution: Bridging the Theoretical and Practical Divide* (footnote 16), pp. 61–77. “At the negotiation table, the political space for normative issues has decreased, even if the public rhetoric in favour of human rights by conflict parties and mediators is still in place”, p. 61.

426 Interview, Jeffrey Feltman, 18 February 2022.

427 Interview, Sara Hellmüller, Senior Researcher, Graduate Institute of International and Development Studies, 24 January 2022.

428 Interview, Andrew Gilmour, Executive Director, Berghof Foundation, 17 February 2022, Berlin.

429 Interview, Jonathan Powell, Director of Inter Mediate, 25 February 2022, Berlin.

430 Interview, Katia Papagianni, 19 January 2022.

431 Interview, Sara Hellmüller, Senior Researcher, Graduate Institute of International and Development Studies, 24 January 2022, Geneva.

432 2012 *UN Guidance on Effective Mediation* (footnote 36), pp. 8–9.

433 Interview, Senior United Nations Official, 15 February 2021.

434 Interview, Teresa Whitfield, Director, Policy and Mediation Division, United Nations DPPA, 15 February 2022.

435 Interview, Ngozi Amu, 2 January 2022.

436 Interview, Mahamane Cissé-Gouro, Director of the Human Rights Council and Treaty Mechanisms Division, OHCHR, 18 January 2022, Geneva.

437 Interview, Ilze Brands Kehris, Assistant Secretary-General for Human Rights, 10 June 2022, New York.

438 Merikallio and Ruokanen, *The Mediator: A Biography of Martti Ahtisaari* (footnote 255), p. 266.

439 Interview, mediation expert, 20 January 2022.

440 Interview, Christian Salazar Volkman, Director, Field Operations and Technical Cooperation Division, OHCHR, 19 January 2022, Geneva.

441 Interview, Senior United Nations Official, 2022.

442 Interview, OHCHR official, 19 January 2022.

443 Interview with Staffan de Mistura, Personal Envoy of the Secretary-General for Western Sahara, 9 March 2022 and with Nicholas Haysom, SRSG for South Sudan and Head of UNMISS, 5 April 2022.

444 Interview, Nicholas Haysom, SRSG for South Sudan and Head of UNMISS, 5 April 2022.

445 Interview, OHCHR official, 18 January 2022.

446 The 2020 *EU Concept on Peace Mediation* (footnote 292) speaks of “principled pragmatism” but without defining what this may imply in practice. “The EU recognises that mediation engagements are highly complex

in nature, and may require a level of principled pragmatism to achieve overarching objectives.” See Annex 4.

447 Interview, Todd Howland, Chief, Development, Economic, Social Rights Branch, OHCHR, 29 December 2021.

448 Interview, Maarit Kohonen Sheriff, Chief, Africa Branch, Field Operations and Technical Cooperation Division, OHCHR, 19 January 2022, Geneva.

449 Interview, Nicholas Haysom, SRSG for South Sudan and Head of UNMISS, 5 April 2022.

450 Interview, Jeffrey Feltman, 18 February 2022.

451 The “Declaration of Essential Rights” proposed by Panama to be included in the Charter at the San Francisco Conference included several economic and social rights, notably the rights to education, work, adequate food and housing and social security. Copy of Declaration available with the author.

452 See Christine Evans, *The Right to Reparation in International Law for Victims of Armed Conflict* (Cambridge, Cambridge University Press, 2012), p. 1.

453 Interview, Hilde F. Johnson, Senior Adviser, European Institute for Peace, Brussels, and former SRSG and head of UNMISS in South Sudan (2011–2014), 26 November 2021.

454 Interview, Fabrizio Hochschild, 9 March 2022.

455 The main aim of the Yemeni Conference for National Dialogue was to “produce a new social contract” and to this end was to discuss, among other issues, “(f) Taking steps aimed at achieving national reconciliation and transitional justice, and measures to ensure that violations of human rights and humanitarian law do not occur in future; (g) The adoption of legal and other means to strengthen the protection

and rights of vulnerable groups, including children, as well as the advancement of women”. Berghof Foundation, “National Dialogue Handbook: A Guide for Practitioners” (Berlin, May 2017), pp. 45–46.

456 Interview, Katia Papagianni, 19 January 2022, Geneva.

457 Interview, mediation expert, 20 January 2022.

458 Interview, Christian Salazar Volkman, Director, Field Operations and Technical Cooperation Division, OHCHR, 19 January 2022.

459 Interview, Dag Nylander, 16 February 2022.

460 Interview, Zeid Ra’ad al Hussein, President and Chief Executive Officer of International Peace Institute, 21 April 2022, New York.

461 Interview, *ibid.*

462 Interview, Katia Papagianni, 19 January 2022, Geneva.

463 Interview, Christophe Kamp, Director of the office of the HCNM, 10 February 2022.

464 Interview, Ilze Brands Kehris, Assistant Secretary-General for Human Rights, 10 June 2022, New York.

465 Interview, Ilze Brands Kehris, Assistant Secretary-General for Human Rights, 10 June 2022, New York.

466 To protect the choice of anonymity, this list (37) does not represent all interviewees (57).

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United Nations Deputy Secretary General Ralph Bunche (left) and UN Representative to the Middle East Gunnar Jarring of Sweden (center) speaks to newsmen at Oslo Airport, Norway in January 1969.

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Associated Press*



Betty Atuku Bigombe (at microphone), Ugandan State Minister for Water Resources, speaks to reporters after participating in a closed, informal (known as "Arria Formula") meeting of the Security Council in August 2012, commemorating International Women's Day, on the role of women in mediation and conflict resolution.

Photo © UN Photo/Eskinder Debebe



Ali Triki, Minister of African Unity of Libyan Arab Jamahiriya, Jan Eliasson, United Nations Special Envoy for Darfur, Salim Ahmed Salim, African Unity Special Envoy for Darfur, and Nafie Ali Nafie, Representative of the Government of Sudan (from left to right) in a consultation meeting prior to the opening plenary session of the Darfur Peace Talks in Sirte, Libyan Arab Jamahiriya, October 2007.

Photo © UN Photo/Fred Noy



Special Representative of the Secretary-General Hilde F. Johnson visits internally displaced people in Pibor, South Sudan, and the surrounding area in July 2012.

Photo © UN Photo/Isaac Billy



Event participants during the signing ceremony of the Colombian Peace Agreement in Cartagena, September 2016.

Photo © UN Photo/Rick Bajornas

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