



Federal Foreign Office

Discussion Paper

Mandating Peace: Enhancing the Mediation Sensitivity and Effectiveness of the UN Security Council

Laurie Nathan
June 2020



Dr. Laurie Nathan is Professor of the Practice of Mediation and Director of the Mediation Program at the Kroc Institute for International Peace Studies, University of Notre Dame. He served as a member of the UN Academic Advisory Council on Mediation and is currently a UN Senior Mediation Adviser as well as the lead designer and trainer of UN High Level Mediation Course. He has been a senior mediation policy adviser to the African Union, ECOWAS, IGAD and SADC.

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Executive Summary

The current report seeks to stimulate a discussion about the UN Security Council's role and effectiveness with regard to mediation processes. It intends to make a contribution to UN mediation policy debates as well as the wider academic literature on the topic.

The key premise is that enhancing the Council's mediation sensitivity and effectiveness will complement other major developments – such as the establishment of the UN Mediation Support Unit (MSU), the publication of the *UN Guidance for Effective Mediation*, and the formation of the Friends of Mediation group – that seek to promote mediation and raise the prospects of success.

For over two decades, rigorous policy discussions on UNSC mandates for *peace operations* have sought to develop best practice and heighten the effectiveness of these operations. By contrast, formal policy discussions on the effects of UNSC mandates for *mediation* are in their infancy. Consequently, there is no collective awareness of what constitutes 'best practice' and 'worst practice' UNSC mandates for mediation. The current report is intended to raise this awareness and stimulate further discussion and research.

The report was commissioned by the Mediation Support Team of the German Federal Foreign Office in 2019. It draws on published sources as well as interviews conducted with UN mediators, other UN officials, and officials from the permanent missions of certain member states. It covers the definition and logic of mediation; UNSC resolutions and mediation mandates; UNSC resolutions in relation to pressurizing the conflict parties and coordinating international peacemaking efforts; best practice observations and lessons; and recommendations.

The report's point of departure is that armed conflicts usually end either through military victory by one of the conflict parties or through a negotiated settlement. If the UNSC wishes to prevent military victory in any given conflict, its resolutions pertaining to that conflict must be conducive to successful mediation. Successful mediation is necessarily based on the conflict parties' consent to both the process and the outcome of mediated negotiations.

UNSC resolutions on a given conflict constitute the mandate for mediation in that conflict. They *empower* the mediator by signaling the Council's backing for her efforts, and they *direct and constrain* her through stipulations on the process, content and outcome of peacemaking. These stipulations reflect international norms relating to peace and security, human rights, and international law. In addition, the resolutions often reflect the geopolitical and other interests of powerful states that serve on the Council. Recognizing these political realities, the report examines how the resolutions can best serve the interests of peacemaking through mediation.

A great deal has been learnt about mediation best practice from research and from critical reflection by practitioners. Much of this best practice is captured in the *UN Guidance for Effective Mediation*. The best practice indicates the necessity to integrate the general and the specific, drawing on general lessons while also developing specific plans and strategies appropriate to each conflict.

This report makes the following arguments:

- The drafting of a Council resolution on a given conflict should be informed by strategic guidance on mediating in that conflict, including the views of the mediator if one has been appointed.
- The resolutions should aim to push the conflict parties towards mediation.
- The resolutions should afford the mediator a high level of flexibility.

The report identifies the best-case scenario as one in which the mediator is extensively involved in shaping a Council resolution. It also identifies five worst-case scenarios:

- The P5 members are so divided that the Council is unable to issue a resolution.
- P5 members support different parties in a conflict, precluding unified UN mediation.
- P5 members back rival peace processes led by different mediating bodies.
- UNSC resolutions are not revised to reflect new realities in a conflict.
- A resolution prescribes a win-lose outcome, effectively discouraging both the favored party and the disfavored party from participating in mediation.

The report makes the following recommendations for enhancing the mediation effectiveness and sensitivity of the Council:

- a. A Mediation Working Group of the UNSC should be established, comprising as many non-permanent members as are interested in joining it. The overall mission of the Working Group would be to deepen the UNSC's understanding of the logic, dynamics and challenges of mediation, both in general and in specific cases.
- b. The Working Group should consider, at an appropriate time, initiating a major policy review of mediation. The review could be administered by the UN Secretary-General. It could assess UN mediation strategies, structures, funding and relationships, as well as the effects of UNSC resolutions on mediation.

- c. The UNSC should convene annual thematic meetings on mediation, which would focus on contemporary peacemaking challenges.
- d. The Working Group should consider drafting, at an appropriate time, a UNSC resolution that reaffirms the Council's support for settling disputes and preventing and resolving conflict through mediation, and that encourages the use of the *UN Guidance on Effective Mediation*. The resolution could emphasize that all member states are obliged to support UN mediations, as well as non-UN mediations endorsed by the Council.
- e. The content of UNSC resolutions on a given conflict should be informed by strategic guidance on mediation in that conflict. The guidance should be prepared by the UN Secretary-General, based on the expertise of UN officials at Headquarters and in the field. The guidance should also be based on the perspective of the mediator if one has been appointed. It could be issued openly or confidentially, as appropriate in the circumstances.
- f. UNSC resolutions on a given conflict should be informed by consultation with the member state decision-making body of the relevant regional organization.
- g. UNSC resolutions on a specific conflict should include a provision requiring the Council to periodically review progress regarding the parties' cooperation with the mediator.
- h. UNSC resolutions should afford the mediator a high level of flexibility. While the resolutions should not refrain from promoting international norms and principles, they should avoid being overly prescriptive on the details of the peace process and outcome. Where the Council takes a more prescriptive stance in a given conflict, this should be on the advice of the mediator, given openly or confidentially as appropriate.
- i. The UNSC's position on the threat, imposition, suspension and lifting of non-military enforcement measures should be informed by the perspective of the mediator and country experts in the UN Secretariat.
- j. Where the P5 is divided on the most appropriate response to a conflict, a minimalist resolution passed with no abstentions may be preferable to a more ambitious resolution passed with abstentions. A resolution passed with abstentions sends a mixed message to the conflict parties and fails to generate the leverage that emanates from a unified Council position.
- k. In the interests of effective mediation, Council resolutions should avoid prescribing a win-lose outcome that creates a disincentive for the targeted party and the non-targeted party to engage in mediated negotiations. Instead, the resolutions should be formulated in a manner that seeks to make a negotiated settlement attractive to all the parties.

1. Introduction

How do UNSC resolutions affect the prospects of ending armed conflict through mediation? This is a vital question for humanitarian and political reasons. In conflicts where thousands of lives are at stake, the Council frequently exercises its responsibility for the maintenance of international peace and security by passing resolutions that are intended to encourage and pressurize the conflict parties to engage in mediated peace negotiations and abide by any peace agreements they have signed.

The need to consider the effects of UNSC resolutions on mediation is heightened by the immense difficulty of ending an armed conflict through mediated negotiations. These conflicts are characterized by the conflict parties' intense enmity, intransigence and zero-sum disposition. Mediated negotiations typically aim to forge a political settlement and long-term coexistence, which are the exact opposite of the parties' desired outcome. The difficulty of mediation is exacerbated by a number of contemporary challenges: fragmented conflict parties; extremist movements; a disconnect between local and national conflict dynamics; partisan regional involvement in the conflict; geo-political tension at the global level; and competition among mediating organizations.

The aim of this report is to examine the effects of UNSC resolutions on mediation efforts by UN and other international mediators, and to present observations, lessons and recommendations that could inform best practice.¹ In the course of preparing the report, UN officials suggested that the members of the UNSC do not have a consistent and adequate understanding of the logic and dynamics of mediation.² An additional overarching aim of the report is therefore to enhance the 'mediation sensitivity' of the Council.

Formal policy discussions on the effects of UNSC resolutions on mediation are in their infancy. By contrast, rigorous policy discussions on UNSC mandates for peace operations have been underway for over two decades and have generated a number of landmark documents.³ A sustained discussion of this nature is needed with respect to UNSC resolutions and mediation. The current report will hopefully serve to stimulate interest in this regard.

The report was commissioned by the Mediation Support Team of the German Federal Foreign Office in 2019. It focuses exclusively on mediation in intra-state armed conflict, which is far more prevalent than inter-state mediation. The relevant mediators include UN envoys, special envoys and special representatives of the Secretary-General (SRSGs), the deputies of these officials, and non-UN mediators engaged in peacemaking in conflicts that are subject to UNSC resolutions.

The report draws on published sources as well as interviews conducted in January and February 2020 with UN mediators, other UN officials, and officials from the permanent missions of certain member states (Appendix 1). The interviews concentrated on the cases

of Central African Republic (CAR), Libya, South Sudan, Syria and Yemen. The UN MSU and some of the interviewees provided feedback on an earlier draft of this report, and the document has been revised accordingly.

The report covers the definition and logic of mediation (section 2); UNSC resolutions and mediation mandates (section 3); UNSC resolutions in relation to the conflict parties and international coordination (section 4); best practice observations and lessons regarding UNSC resolutions and mediation; and recommendations (section 6).

2. Definition and logic of mediation

2.1 Definition

The UN defines mediation as ‘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’.⁴ In the context of armed conflict, UN mediation is a form of ‘peacemaking’, understood as ‘action to bring hostile parties to agreement by peaceful means’.⁵

The UN definition highlights two core features of mediation. First, mediation is a *consensual* endeavor. Without consent, it is unlikely that the parties will negotiate in good faith or be committed to the mediation process. Consent is not static but might ebb and flow in the course of negotiations. The requirement of consent has a number of elements: consent to engage in mediation; acceptance of the mediator; consent to the mediation agenda and process; and acceptance of agreements. Agreements that are not fully owned by the parties are not sustainable.

Second, the *conflict parties (and sometimes their external allies) are the main decision-making actors* and the mediator is a secondary, supportive actor. The influence of the mediator should not be overstated. It is the parties, not the mediator, who decide whether there are serious negotiations, whether viable agreements are concluded, and whether the agreements are implemented and sustained. Mediation can thus be understood as a form of *facilitated or assisted negotiations* between the conflict parties.⁶

Since successful mediation processes and outcomes require the parties’ consent, UNSC resolutions should aim to *push the parties towards mediated negotiations and not away from them*. What this means in practice will differ from one conflict to another and may change as a conflict evolves. The worst-case scenarios discussed below put the parties away from mediation (section 5.5).

2.2 The logic of mediation

In situations of armed conflict, the basic challenge confronting the mediator is to induce enemies that are locked in a relationship of hatred, killing and destruction to engage in a cooperative venture of negotiations that leads to a cessation of hostilities, mutual accommodation, and peaceful co-existence in the long-term. The mediator has to shift the parties' win-lose disposition to a win-win orientation. In most negotiated settlements, this entails some form of power-sharing.⁷

In armed conflicts, however, the mediator is confronted by parties at their most uncooperative, intransigent and bellicose. They view mediated negotiations with their enemy as anathema, their differences with their opponents as irreconcilable, their own demands as non-negotiable, and the possibility of a negotiated settlement as unimaginable.

In light of these psycho-political dynamics of conflict, the mediator must endeavor to heighten the parties' awareness of the current and future costs and risks of continued fighting, build their confidence in mediated negotiations, and reduce their enmity, fears, hatred and anger. If this does not happen, the parties will not accept the mutual accommodation and compromises that are *necessary conditions* for a sustainable settlement. *Information-provision, confidence-building and political reconciliation* consequently lie at the heart of the logic and utility of mediation.⁸

UNSC resolutions on a given conflict pose a potential paradox for successful mediation. On the one hand, the resolutions and coercive measures can be effective in putting pressure on the parties, raising the cost of continued hostilities and thereby making mediated negotiations more attractive. On the other hand, the resolutions and coercion can be counter-productive if they heighten a party's intransigence and resistance to mediation (section 5.3).

3. UNSC resolutions: mediation mandates

The mandate of UN mediators is not limited to those paragraphs in a UNSC resolution that refer specifically to the mediator. Mediation mandates are more diverse and complicated than this, and can be divided into political mandates, normative mandates and party mandates.⁹

3.1 Political mandates

UN mediators are not ‘free agents’, at liberty to shape a mediation process and outcome without regard to the political wishes and concerns of the organization they represent. Instead, their peacemaking endeavors are governed by a principal-agent relationship. This relationship is regulated by UNSC resolutions on a given conflict, which constitute the mediator’s political mandate for addressing that conflict.

UNSC resolutions *empower* the mediator by signaling the Council’s backing for her efforts, which affords her some leverage over the parties. The resolutions also *direct and constrain* the mediator through stipulations on the process, content and outcome of conflict resolution endeavors.

UNSC Resolution 2254 (2015) on Syria illustrates this dynamic. It requests the Secretary-General, through his good offices and the efforts of his Special Envoy for Syria, to convene representatives of the Syrian government and opposition to engage in negotiations on a political transition process that leads to a lasting political settlement of the crisis. In addition to this broad formulation, the resolution contains more specific stipulations on the process and outcome. It requires the formation of a transitional governing body with full executive powers, a schedule and process for drafting a new constitution, and free and fair elections within 18 months administered under UN supervision. The mediator is obliged to work within these parameters.

3.2 Normative mandates

In addition to UNSC resolutions on a particular conflict, there are Council resolutions and elements of international law that advance normative prescriptions affecting mediation *in all conflicts*. These ‘normative mandates’ include respect for human rights, the rule of law and international law.¹⁰ Other prominent norms that form part of the UN mediator’s mandate in all peacemaking cases are encapsulated in the Women, Peace and Security Agenda, which was formalized in UNSC Resolution 1325 (2000) and subsequent Council resolutions on this theme.

Two broad observations can be made about these mandates. First, a distinction can be drawn between legal norms that have to be followed strictly, and aspirational norms that are matters of degree and interpretation. The former include respect for life and human rights, and the prohibition on impunity for mass atrocity crimes. The aspirational norms include inclusivity in peace processes and the principles of accountability and transparency in governance.

Second, the aspirational norms are probably most influential in mediation processes when they are incorporated into UNSC resolutions on a particular conflict. The norms then become part of the mediator's political mandate for that conflict. For example, references to the WPS Agenda in Council resolutions on a specific conflict can constitute a productive form of pressure, providing leverage to the mediator, domestic women's groups and their external partners.¹¹

3.3 Party and constituency mandates

Because mediation requires the parties' consent, the mediator needs a mandate from the parties. Whereas mediators *receive* political mandates from the mandating authority, they must *win and retain* party mandates from the conflict actors. Party mandates therefore give the parties some leverage over the mediator. After all, the parties can simply refuse to engage seriously in mediation. A mediator or mandating authority that pushes the parties to adopt positions they oppose runs the risk of losing their cooperation.

3.4 Implications

Because UN mediators are governed by a principal-agent relationship, they cannot simply attempt to help the conflict parties resolve their conflict *on any terms*. Rather, they are obliged to seek a resolution that satisfies the terms *specified by the UNSC* in relevant resolutions. The mediator's mandate is not confined to those paragraphs that refer specifically to mediation in a particular conflict. It is governed and circumscribed by the entire content of all the relevant UNSC resolutions. This may inhibit the flexibility that is needed for mediation effectiveness (section 5.2).

The content of UNSC resolutions may make it very difficult for the mediator to secure a mandate from the parties. Indeed, a party's resistance to mediation may be *heightened* by the Council's position. This is especially the case where members of the P5 hold partisan positions and where a resolution promotes a win-lose outcome that creates a *disincentive* for the targeted party to participate in mediation (section 5.4).

Normative mandates that emanate from international law and thematic UNSC resolutions can strengthen the position of conflict parties and other domestic actors that embrace those norms. But they can also generate resistance from parties that oppose the norms. The UNSC and UN mediators must therefore navigate an appropriate application of the norms, recognizing that *national ownership* of peace processes and agreements is itself a fundamental norm of mediation.¹²

4. UNSC resolutions: pressurizing conflict parties and coordinating international efforts

4.1 Conflict parties

UNSC resolutions on a particular conflict invariably contain provisions that are intended to direct and constrain the behavior of the conflict parties. The parties are typically enjoined to accept a ceasefire or refrain from violating a ceasefire already concluded; participate in a peace process and abide by any agreements that have been reached; allow humanitarian access to people in need and comply with other aspects of international humanitarian law; and respect human rights.¹³ In practice, of course, the parties often ignore these prescriptions. In some but not all such instances, the UNSC responds by increasing the pressure on the parties.

Where the UNSC ‘determine[s] the existence of any threat to the peace, breach of the peace, or act of aggression’, it can take or threaten to take enforcement action in order to maintain or restore international peace and security.¹⁴ In some conflicts, such as South Sudan, enforcement actions are staggered over time and become increasingly punitive.¹⁵ In general, the effects of enforcement action on the initiation and outcome of mediation are uncertain (section 5.3).

4.2 International actors

One of the problems that bedevils contemporary peacemaking initiatives is competition and lack of coordination among mediating bodies, which typically include the UN, regional organizations and states.¹⁶ UNSC resolutions have sought to manage and minimize this problem by promoting cooperation, coordination and harmonization of positions. This has included endorsing mediation processes and/or peace agreements in conflicts where the UN is not the lead mediating body.

For example, peace initiatives for the CAR have been undermined by international competition and lack of coordination.¹⁷ UNSC Resolution 2448 (2018) thus calls on all actors to support the African Initiative for Peace and Reconciliation in the CAR and its roadmap of 2017; calls on the AU, ECCAS, the ICGLR and neighboring countries to step up their coordination and implementation efforts; and welcomes the first meeting of the International Support Group to the CAR to promote coherent and sustained engagement for stabilization and recovery efforts.

Such efforts by the UNSC to coordinate and harmonize peacemaking processes have been relatively successful.¹⁸ A significant exception is where P5 members have divergent views on conflict resolution in a given case,¹⁹ and particularly where a P5 member initiates or backs a rival mediation process. For example, in 2018 Russia and Sudan hosted peace talks for the CAR, generating concerns that this process undermined the AU mediation supported by the UN.²⁰ Another example of concerns over competitive mediation was the South African and Tanzanian mediation for South Sudan when IGAD was the lead mediator for that conflict.²¹

Over the past decade, the UN and regional organizations have made considerable progress in developing strategic partnerships around peace and security interventions, including mediation.²² A big challenge in this regard is that the partnerships have been built between the organizations' secretariats and not at the more political level of the member state decision-making bodies.²³ UNSC resolutions on a given conflict should be informed by consultation with the member state decision-making body of the relevant regional organization.

5. Observations and lessons regarding UNSC resolutions and mediation

This section presents observations and lessons regarding the effects of UNSC resolutions on mediation. It explains the necessity for the Council to solicit strategic and technical guidance on mediation, and then discusses the critical issues of mediator flexibility, adherence to UNSC resolutions, enforcement action, and mediator impartiality and neutrality. It concludes by presenting a number of worst-case and best-case scenarios.

5.1 Strategic guidance on mediation

Within the parameters of mediation best practice, there is no formula for determining the 'perfect' content of a UNSC resolution. Each conflict is unique and must be addressed in terms of its own distinctive and evolving dynamics. Consequently, mediation cannot be undertaken in a formulaic or mechanical fashion. It depends on sound political judgement, creativity, flexibility and responsiveness to the parties.²⁴

It is therefore essential that the penholder responsible for drafting a resolution on a given conflict, and the UNSC as a whole when deliberating on the draft resolution, solicit expert strategic and technical advice on mediation, including from the mediator if one has been appointed. This imperative is reiterated throughout this section and elaborated in the recommendations (section 6).

5.2 Mediator flexibility and adherence to UNSC mandates

Many mediators regard flexibility as an essential condition for effectiveness and success. Lakhdar Brahimi and Salman Ahmed go so far as to argue that ‘mediator inflexibility’ is one of the ‘seven deadly sins of mediation.’²⁵ They motivate the argument in terms of the *dynamic nature of conflict*: ‘Constantly evolving developments can create new opportunities to be exploited or new formidable obstacles to be overcome. The SRSG or other international mediator does not have the luxury of being indifferent to the change in context.’²⁶

The further motivation for mediator flexibility lies in the *intransigent posture of the conflict parties*. It is immensely difficult for mediators to overcome this intransigence, and it may therefore be unhelpful if they themselves are inflexible on key issues. Brokering an agreement on terms that are satisfactory to mortal enemies locked in a zero-sum struggle is tough enough without having to ensure that the agreement also complies with the terms specified in a UNSC resolution.

Given the importance attached to mediation flexibility, some mediators have a strong preference for minimal constraints in a UNSC resolution. To the greatest extent possible, the resolutions should leave the details of the peacemaking process and outcome in the hands of the mediator.²⁷

However, there are two counter-arguments to this position. First, mediators may sometimes prefer a restrictive mandate that narrows the space for bargaining by the parties.²⁸ A UNSC resolution that stipulates the parameters of the outcome of mediated negotiations can have certain benefits: it may preclude radically divergent proposals from the parties; enable a more focused approach to negotiations; and prevent a strong party from overwhelming a weak party at the negotiating table.

Second, mediators cannot ignore the preferences of the P5. For mediators, one of the most important aspects of UNSC resolutions is that they signal the perspectives, interests and ‘redlines’ of the P5.²⁹ They reflect the *realpolitik* and the negotiated common position of the P5. The mediator has no option but to work within these political parameters.

Nevertheless, a major challenge is that UNSC resolutions reflect the conflict dynamics and the common position of the P5 *at a particular moment in time*.³⁰ Yet neither the conflict nor the perspectives of the P5 are static. Where the common position of the P5, as reflected in a Council resolution, proves to be unfeasible or becomes outdated, the resolution is often not adapted accordingly. The mediation then entails a difficult effort to ‘negotiate between the existing UNSC resolution and the new balance of power’³¹

Although Brahimi and Ahmed caution against mediator inflexibility, they also stress the need for mediators to adhere to their mandate: ‘Security Council members need to be constantly consulted and assured that the courses of action the mediator proposes are faithful to the mandate that they have authorized (and carefully calibrated to reconcile points of disagreement among them).’³²

While mediators’ adherence to their mandates is essential, there is room for interpretation and flexibility. Some mediators regard their mandate as a ‘ceiling’, whereas others regard it as a ‘floor’.³³ The ‘ceiling’ mediators are cautious. They adhere strictly to the wording of the relevant resolutions and are reluctant to take action that is not expressly authorized therein. The ‘floor’ mediators are bolder and may be confident to take action that is not expressly authorized, as long as it is not expressly forbidden. They are confident that they enjoy the latitude and flexibility inherent in the Secretary-General’s good offices function.³⁴

The boldest mediators believe they can deviate from the constraining provisions of a UNSC resolution where this serves the interests of ending hostilities, provided that the P5 members do not object to the deviations.³⁵ The mediator must therefore consult the P5 and other relevant members of the Council and convince them of the necessity for the deviations.³⁶

5.3 Enforcement action and mediation

The authorization of use of force by the UNSC dramatically reduces the space for conflict resolution through mediation.³⁷ It reinforces the win-lose disposition of the parties, encourages both the targeted party and the non-targeted parties to remain committed to violence, signals that the Council is not seriously interested in mediation, and reduces the mediator’s authority. These problems arose in relation to UNSC Resolution 1973 (2011) on Libya.³⁸

Where the UNSC applies non-military enforcement measures, the intention is to halt or at least constrain the parties’ resort to violence and pressurize them into participating in peace negotiations and abiding by any agreements they have signed. The rationale is that the political, financial and other costs associated with enforcement measures will change the calculus of intransigent parties in favor of a negotiated peace.

This position may be compelling on humanitarian grounds but it is not supported by systematic evidence. Research on mediation and coercive leverage is characterized by a lack of consensus.³⁹ UN sanctions have complemented mediation efforts in some instances and complicated them in others.⁴⁰ Strong leverage can induce the parties to sign agreements they do not really support, leading to an illusory peace that breaks down once international pressure eases.⁴¹

The risk associated with non-military enforcement measures is that they are *counter-productive*. They can heighten the targeted party's resistance rather than reduce it, reinforce the position of hardliners and intensify the party's vilification of its opponents as well as the mediating body.⁴²

Enforcement action can also embolden the non-targeted party, causing it to resist negotiations in the belief that the tide of battle will eventually turn in its favor.⁴³

Some mediators report that the UNSC's *threat* of targeted sanctions can have a more positive effect on the parties than the *imposition* of sanctions.⁴⁴ Where parties desperately do not want to be subjected to sanctions, the threat of sanctions may incentivize them to cooperate with the mediator.⁴⁵ Where targeted sanctions have been imposed, on the other hand, the mediator may try to win the cooperation of a targeted party that desperately wants to be removed from a sanctions list.⁴⁶ The process of removal is difficult and uncertain, however. What is required is a mechanism to convey to sanctioned parties what specifically they need to do to have the sanctions removed.⁴⁷ In the interests of effective mediation, the UNSC should affirm the parties' cooperation with the mediator when it takes place.

One UN mediator summarized the difficulty with sanctions by saying they are 'a blunt instrument, whereas mediators want more precise and adaptable tools'.⁴⁸ Another UN mediator suggested that UNSC resolutions should 'maximize pressure on the parties but make moderate demands'.⁴⁹ Yet another mediator emphasized the distinction between pressure to get the parties to accept an outcome prescribed by the UNSC and pressure to get them to abide by agreements they have negotiated themselves.⁵⁰ The latter approach is more likely to be effective since it is less likely to be perceived as an external imposition.

Given the difficulty of predicting the impact of UNSC enforcement measures in a given conflict, it would be advantageous for the Council to *consult the mediator when it deliberates on the best course of action*. This may have to be done confidentially since mediators generally wish to maintain a posture of impartiality and do not want to be associated with punitive action.

5.4 Mediation impartiality and neutrality

The *UN Guidance on Effective Mediation* regards impartiality as a 'cornerstone of mediation – if a mediation process is perceived to be biased, this can undermine meaningful progress to resolve the conflict'.⁵¹ This norm is a logical consequence of the consensual nature of mediation. A party that believes the mediator is biased against it will naturally be loath to cooperate with that mediator.

Impartiality is not synonymous with neutrality. International mediators, and especially UN mediators, have a normative mandate to uphold certain universal principles and values, and may need to make them explicitly known to the parties (section 3.2).⁵² As noted above, mediators operate within the framework of humanitarian law, human rights law and international criminal law, and in accordance with normative expectations regarding justice, the inclusion of civil society, and the participation of women in peace processes.⁵³

In practice, the dividing line between impartiality and neutrality can be blurred. The UNSC is obliged to defend and promote international norms, and it may therefore feel compelled to condemn conflict parties that commit gross human rights abuses, engage in indiscriminate use of force and/or violate peace agreements. In extreme situations, the Council may feel compelled to threaten or impose enforcement measures on such parties. The targeted parties are likely to perceive the criticism and enforcement measures as biased against them, and they may consequently be averse to cooperating with the UN mediator.

This dilemma has no general solution. Striking the right balance has to be determined on a case-by-case basis. When drafting a resolution, it is advisable that the UNSC penholder consult the relevant UN experts, including the mediator if one has been appointed (section 6.2).

Given the importance of mediator impartiality, UN mediators may try to create some distance between themselves and the Council. They have done this by informing the parties they will be as fair and balanced as possible despite the UNSC resolutions and that the parties' cooperation with the mediator is the only viable strategy for easing pressure and avoiding further punitive action.⁵⁴

The members of the UNSC and the P5 in particular may have political, geo-strategic and economic interests in the outcome of a conflict and may be strongly biased in favor of or against one of the conflict parties. These partisan interests militate against effective mediation and can give rise to the worst-case scenarios described below.

5.5 Worst-case and best-case scenarios

Although there is no formula for a perfect UNSC resolution in terms of mediation, it is possible to identify a number of worst-case scenarios:

- *The members of the P5 are so divided on a given conflict that the Council is unable to issue a resolution. An extreme example of this was Syria after the outbreak of fighting in 2011.*⁵⁵

- Members of the P5 have partisan allegiances in a given conflict, with some of them supporting certain parties and some of them supporting other parties. These divisions preclude effective mediation and encourage the parties to continue fighting. This situation has prevailed throughout the Syrian conflict.⁵⁶
- Members of the P5 *back different mediation processes*. This is especially problematic where, as with the CAR and Syria⁵⁷, the Council has already endorsed a peace process.
- The UNSC issues a resolution *prescribing a win-lose outcome*, creating a strong disincentive for both the targeted party and the non-targeted party to engage in mediation. The targeted party has nothing to gain and everything to lose from mediation, and the non-targeted party is emboldened to continue fighting. Examples of this scenario include Libya in 2011,⁵⁸ and Yemen in 2015.⁵⁹
- Members of the UN *do not comply* with a UNSC resolution, which is especially problematic where the non-complying state is one of the P5.⁶⁰
- The UNSC issues a resolution that is *not revised subsequently to reflect new realities*, with the result that the mediators have little hope of making progress without deviating from the resolution. Current examples of this problem include Syria and Yemen.⁶¹

The *best-case scenarios* are those where the mediator is *extensively involved in shaping a UNSC resolution* based on his/her understanding of the conflict dynamics and the disposition of the parties. The examples raised by UN respondents are the involvement of Jamal Benomar, Special Advisor to the UN Secretary-General, in shaping UNSC Resolution 2014 (2011) on Yemen, and the involvement of SRSR Ian Martin in shaping UNSC Resolution 2040 (2012) on Libya.⁶²

UN mediators also welcome Council resolutions that call for international actors to support the lead mediator in a given conflict and that insist on coordination, cooperation and harmonization of international peacemaking endeavors.⁶³

6. Recommendations: Enhancing the mediation sensitivity and effectiveness of the UNSC

The recommendations in this section focus on *processes* for enhancing the mediation sensitivity and effectiveness of the UNSC. They do not offer many prescriptions on the *content* of UNSC resolutions. This is because the content is contingent on the intensity, nature and evolution of the conflict, the character of the parties, and the parties' willingness to engage in mediated negotiations and abide by agreements they have signed. It is also relevant whether the mediation is led by the UN or another organization, and whether the

UN has a well-established mission in the country concerned (e.g. the CAR) or is reacting to fast-breaking hostilities (e.g. Libya).

The recommendations accept the realpolitik of UNSC deliberations and do not imagine that it is possible to bypass those dynamics. They recognize that a mediated solution to an armed conflict is always extremely hard to achieve and there is consequently never a ‘quick fix’ or ‘magic bullet’. They seek to accommodate both the need for mediator flexibility and the need for the Council to promote the norms and principles of the UN and international law.

It is worth emphasizing that the UN mediators, UN officials and other respondents interviewed for this report agreed that the penholders on draft resolutions, and the UNSC as a whole, would benefit from having access to strategic and technical guidance on mediation.⁶⁴ As noted in the Introduction, the Council’s approach to mediation stands in stark contrast to its appreciation of the expertise required for effective peace operations. A number of the recommendations below draw on precedents from the policy realm of peace operations.

6.1 Heightening mediation sensitivity

- a. A Mediation Working Group of the Council should be established, comprising as many members as are interested in joining it. The Working Group’s overall mission would be to deepen the Council’s understanding of the logic, dynamics and challenges of mediation, both in general and in specific cases. The Working Group would serve as ‘champions of mediation’ and promote the other recommendations in this section. It would complement the activities of the Group of Friends of Mediation,⁶⁵ but would have a more specific focus on UNSC deliberations and resolutions.
- b. The Working Group should consider, at an appropriate time, initiating a major policy review of mediation. The review could be administered by the UN Secretary-General and could be modelled on the comprehensive independent assessments that have been conducted of UN peace operations (e.g. the Brahimi Report and the HIPPO Report). It could assess UN mediation styles, strategies, challenges, structures, funding, expertise and relationships, as well as the effects of UNSC resolutions on mediation. On the basis of the policy review, the Mediation Working Group would develop recommendations on improving the effectiveness of UN mediation.⁶⁶
- c. The Working Group should convene annual thematic meetings on mediation. The meetings would focus on contemporary challenges, such as mediation relations between the UN and regional bodies; gender and inclusion in peace processes; the links between mediation at local, national and regional levels;

the comparative advantages of mediation and national dialogues; dealing with conflict parties that are highly fragmented; the synergies and complications of combining mediation with sanctions and other Council responses to armed conflict; and different approaches to mediation led or supported by different categories of UN official (e.g. Special Envoys, heads of mission and resident coordinators). The meetings could take the form of an Arria-formula meeting of the Council, with expert contributions from mediators, member states, the Secretariat and civil society think-tanks.

- d. The Working Group should consider drafting, at an appropriate time, a UNSC resolution that reaffirms the Council's support for preventing and resolving conflict through mediation, and that encourages the use of the *UN Guidance on Effective Mediation* in mediation efforts.⁶⁷ The resolution could emphasize that all member states are obliged to support UN mediations, as well as non-UN mediations that have been endorsed by the Council.⁶⁸

6.2 *Enhancing the effectiveness of mediation in specific cases*

- e. The content of UNSC resolutions on a given conflict should be informed by strategic guidance on mediation in that conflict. The guidance should be prepared by the Secretary-General, based on the expertise of relevant UN officials at Headquarters and in the field.⁶⁹ The strategic guidance should also be based on the perspective of the mediator if one has been appointed. The guidance could be issued openly or confidentially, as appropriate in the circumstances.
- f. UNSC resolutions on a given conflict should be informed by consultation with the member state decision-making body of the relevant regional organization.
- g. UNSC resolutions should include a provision requiring the Council to periodically review progress regarding the parties' cooperation with the mediation.⁷⁰ This would avoid freezing the Council's position at a particular moment in time. It would constitute a form of pressure on the parties and enable the mediator to advise the UNSC on appropriate adjustments to the mediation mandate. The Council may occasionally have to confront the reality that major changes should be made to the mediation approach. In addition to reviewing the parties' cooperation, it is helpful if the lead mediator conducts periodic reviews of the mediation strategy and process.

- h. UNSC resolutions should afford the mediator a high level of flexibility. While the resolutions should not refrain from promoting international norms and principles, they should avoid being overly prescriptive on the details of the peace process and outcome. Where the Council takes a more prescriptive stance, this should be on the advice of the mediator, given openly or confidentially as appropriate.
- i. The UNSC's position on the threat, imposition, suspension and lifting of non-military enforcement measures should be informed by the perspective of the mediator and UN officials who are well placed to advise on the implications of enforcement measures for mediation.⁷¹ The mediator's advice could be provided openly or confidentially.⁷²
- j. Where the P5 is divided on the most appropriate response to a conflict, a minimalist resolution passed with no abstentions may be preferable to a more ambitious resolution passed with abstentions. A resolution passed with abstentions sends a mixed message to the conflict parties and fails to generate the leverage that emanates from a unified Council position. A minimalist resolution should nevertheless insist that the parties cooperate with the mediator.
- k. In the interests of effective mediation, Council resolutions should avoid prescribing a win-lose outcome that creates a disincentive for both the targeted party and the non-targeted party to engage in mediated negotiations. Instead, the resolutions should be formulated in a manner that seeks to make a negotiated settlement attractive to all the parties.

Appendix

Interviewees

January and February 2020

- Dann, Robert – Director Political Affairs, Office of the UN Special Envoy for Syria, former Chief Mediation Support Unit, UN DPPA
- El Eid, Nabil – First Secretary, Mission of the Federal Republic of Germany to the UN
- Fong, Alexandra – Mediation Support Unit, UN DPPA
- Gluck, Kenny – former DSRSG CAR, former Deputy Special Envoy Yemen
- Gourgon, Samuel – First Secretary, Mission of France to the UN
- Gugel, Alex – First Secretary, Mission of the Federal Republic of Germany to the UN
- Haysom, Nicholas – Special Envoy Sudan and South Sudan, former SRSG Somalia, former SRSG Afghanistan
- Kane, Sean – UN DPPA
- Khan, Asif – Chief Mediation Support Unit, UN DPPA
- Mansfield, Julian – First Secretary Middle East, United Kingdom Mission to the UN
- Martin, Ian – former SRSG Libya, former SRSG Nepal, former Special Envoy Timor-Leste
- Marzolf, Erik – Security Council Affairs Division, UN DPPA
- Mohamed, Kulmiye – Mediation Support Unit, UN DPPA
- Musah, Abdel-Fatau – Director Africa II Division, UN DPPA
- Nehring, Agapi – Counsellor Political Affairs, Mission of the Federal Republic of Germany to the UN
- Nsenkeng, Peter – UN DPPA
- Ong, Kelvin – Chief Security Council Subsidiary Bodies, UN Security Council Affairs Division, former Chief Mediation Support Unit, UN DPPA
- Saxinger, Melanie – First Secretary, Mission of the Federal Republic of Germany to the UN
- Siegmann, Elena – First Secretary, Mission of the Federal Republic of Germany to the UN

Notes

- ¹ The report does not cover UN mediation and ‘good offices’ that are based on a mandate from the UN Secretary-General in the absence of a UNSC resolution.
- ² Interviews with UN officials, January 2020.
- ³ These documents include the 2000 report of the Panel on UN Peace Operations (the Brahimi Report); the 2015 report of the High-Level Independent Panel on Peace Operations (the HIPPO Report); and the 2018 Declaration of Shared Commitments on UN Peacekeeping Operations.
- ⁴ *United Nations Guidance for Effective Mediation*, 4.
- ⁵ B. Boutros-Ghali (1992), *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping*. UN: New York.
- ⁶ Interview with UN mediator, January 2020.
- ⁷ A. Jarstad (2009), ‘The prevalence of power-sharing: exploring the patterns of post-election peace’, *Africa Spectrum* 44(3): 41-62.
- ⁸ L. Nathan (1999), ‘When push comes to shove: The failure of international mediation in African civil wars’, *Track Two* 8(2): 1-23.
- ⁹ L. Nathan (2018), ‘The mandate effect: a typology and conceptualization of mediation mandates’, *Peace & Change* 43(3): 318-343.
- ¹⁰ *United Nations Guidance*, 16.
- ¹¹ R. Coomaraswamy (2015), *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council Resolution 1325*. NY: UN Women.
- ¹² *United Nations Guidance*, 14.
- ¹³ E.g., Resolution 2254 (2015) on Syria, and Resolution 2428 (2018) on South Sudan.
- ¹⁴ Article 39 of the UN Charter.
- ¹⁵ See Resolution 2206 (2015), Resolution 2304 (2016) and Resolution 2428 (2018) on South Sudan.
- ¹⁶ L. Nathan (2017), ‘How to manage interorganizational disputes over mediation in Africa’, *Global Governance* 23(2): 151-162.
- ¹⁷ ICG (2019), ‘Making the Central African Republic’s latest peace agreement stick’, *Africa Report* 277.
- ¹⁸ Interviews with UN mediators and officials, January 2020.
- ¹⁹ E.g., R. Hinnebusch and I.W. Zartman (2016), *UN Mediation in the Syrian Crisis: From Kofi Annan to Lakhdar Brahimi*, International Peace Institute: New York.
- ²⁰ ICG, ‘Making the Central African Republic’s latest peace agreement stick’.
- ²¹ International Crisis Group (2015), ‘South Sudan: keeping faith with the IGAD peace process’, *Africa Report* 228.
- ²² For example, UN (2015), ‘Cooperation between the United Nations and Regional and Subregional Organizations on Mediation. Report of the Secretary-General’, UN Doc. A/70/328.
- ²³ Nathan, ‘How to manage interorganizational disputes’.
- ²⁴ *UN Guidance*, 3 - 6.
- ²⁵ L. Brahimi and S. Ahmed (2008), *In Pursuit of Sustainable Peace: The Seven Deadly Sins of Mediation*, Center on International Cooperation, New York University.

- ²⁶ Brahimi and Ahmed, *In Pursuit of Sustainable Peace*.
- ²⁷ Interviews with UN officials, January 2020; K. Skjelsbaek (1991), 'The UN Secretary-General and the mediation of international disputes', *Journal of Peace Research* 28(1): 99–115.
- ²⁸ Interview with UN mediators, January 2020; T. Franck (1995), 'The Secretary-General's role in conflict resolution: past, present and pure conjecture', *European Journal of International Law* 6: 360–387.
- ²⁹ Interview with UN mediator, January 2020.
- ³⁰ Interview with UN mediator, January 2020.
- ³¹ Interview with UN mediator, January 2020.
- ³² Brahimi and Ahmed, *In Pursuit of Sustainable Peace*, 8.
- ³³ Interviews with UN mediators, January 2020.
- ³⁴ Interviews with UN mediators, January 2020.
- ³⁵ Interview with UN mediator, January 2020.
- ³⁶ Interview with UN mediator, January 2020.
- ³⁷ Interviews with UN mediators and officials, January 2020.
- ³⁸ ICG (2011), 'Libya: achieving a ceasefire, moving toward a legitimate government'.
- ³⁹ P. Wallensteen and I. Svensson (2014), 'Talking peace: International mediation in armed conflicts', *Journal of Peace Research* 51(2): 315–327 at 319–320.
- ⁴⁰ T. Biersteker, R. Brubaker, and D. Lanz (2019), *UN Sanctions and Mediation: Establishing Evidence to Inform Practice*, Centre for Policy Research, UN University.
- ⁴¹ K. Beardsley (2011), *The Mediation Dilemma*, Cornell University Press.
- ⁴² I.W. Zartman (2001), 'The timing of peace initiatives: Hurting stalemates and ripe moments', *Global Review of Ethnopolitics* 1(1): 8–18; Biersteker, Brubaker and Lanz, *UN Sanctions*.
- ⁴³ E.g., ICG, 'Libya: achieving a ceasefire'; L. Nathan (2006), 'No ownership, no peace: the Darfur peace agreement', *Working Paper*, Crisis States Research Centre, LSE.
- ⁴⁴ Interview with UN mediators, January 2020.
- ⁴⁵ Biersteker, Brubaker and Lanz, *UN Sanctions and Mediation*, 9.
- ⁴⁶ Biersteker, Brubaker and Lanz, *UN Sanctions and Mediation*, 10.
- ⁴⁷ Interview with UN mediator, May 2020.
- ⁴⁸ Interview with UN mediator, January 2020.
- ⁴⁹ Interview with UN mediator, January 2020.
- ⁵⁰ Interview with UN mediator, January 2020.
- ⁵¹ *UN Guidance*, 10.
- ⁵² *UN Guidance*, 10.
- ⁵³ *UN Guidance*, 16.
- ⁵⁴ Comments by senior UN mediators at the annual UN High Level Mediation Course.
- ⁵⁵ Hinnebusch and Zartman, *UN Mediation in the Syrian Crisis*;
K. Annan (2012), 'My departing advice on how to save Syria', *Financial Times*, 2 August.
- ⁵⁶ J. Gifkins (2012), 'The UN Security Council divided: Syria in crisis', *Global Responsibility to Protect* 4(3): 377–393.

- ⁵⁷ ICG, 'Making the Central African Republic's latest peace agreement stick'; M. Asseburg (2018), 'Syria: UN mediation at the mercy of regional and major-power interests', in M. Asseburg, W. Lacher and M. Transfeld, *Mission Impossible? UN Mediation in Libya, Syria and Yemen*, SWP Research Paper no. 8, Stiftung Wissenschaft und Politik, 28-43.
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- ⁵⁹ R. Forster (2017), 'Toward a comprehensive solution? Yemen's two-year peace process', *The Middle East Journal* 71(3): 479-488; ICG (2016), 'Yemen: Is Peace Possible?', *Middle East Report* 167.
- ⁶⁰ J. Cockayne, C. Mikulaschek, and C. Perry (2010), *The United Nations Security Council and Civil War: First Insights from a New Dataset*, International Peace Institute, New York.
- ⁶¹ Interviews with UN mediators and officials, January 2020.
- ⁶² Interviews with UN officials, January 2020. Resolution 2040 (2012) on Libya related more to the mandate of UNSMIL than to mediation per se.
- ⁶³ Interviews with UN mediators, January 2020.
- ⁶⁴ Interviews conducted in New York, January and February 2020.
- ⁶⁵ On the Group of Friends of Mediation, see <https://peacemaker.un.org/friendsofmediation>.
- ⁶⁶ For a precedent relating to sanctions, see UN Security Council (2006), 'Letter dated 18 December 2006 from the Chairman of the Informal Working Group of the Security Council on general issues of sanctions addressed to the President of the Security Council', S/2006/997 (<https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/WG%20Sanctions%20S2006997.pdf>).
- ⁶⁷ An analogous resolution is UN General Assembly Resolution 66/291 (2012).
- ⁶⁸ UN mediators and officials believe that such insistence by the Council is helpful even if it does not constrain the most powerful states.
- ⁶⁹ By way of analogy, the Secretary-General guides the UNSC on peace operations by providing members with 'a common point of departure for discussion and decision-making, identifying options for action as appropriate, coupled with a realistic appraisal of the risks and opportunities for each'. See UN (2001), 'No exit without strategy: Security Council decision-making and the closure or transition of United Nations peacekeeping operations. Report of the Secretary-General', UN doc. S/2001/394, 8.
- ⁷⁰ E.g., UNSC Resolution 2206 (2015) on South Sudan expresses the Council's intent to review the situation on specified dates and at 60-day intervals thereafter or more frequently, as needed (para 21). Such review provisions should refer explicitly to the mediation process.
- ⁷¹ Other recommendations regarding the UNSC, sanctions and mediation can be found in Biersteker, Brubaker and Lanz, *UN Sanctions and Mediation*, 23.
- ⁷² There have been cases where mediators have openly discussed sanctions but these are probably exceptional (Biersteker, Brubaker and Lanz, *UN Sanctions and Mediation*, 40).

Imprint

Editor:

Auswärtiges Amt, Werderscher Markt 1, 10117 Berlin

www.diplo.de

Corporate Design:

Atelier Hauer + Dörfler, Berlin, www.hauer-doerfler.de

Design:

ORCA Affairs GmbH

Print:

Pierreg Druckcenter