Legitimacy and peace processes

International norms and local realities
Jean Arnault

Peace processes are born, rise and prevail – when they do – in a climate of contested legitimacy. And even years after peace has been restored, the controversy over the peace process lingers on.

Challenges to the legitimacy of a peace process address its most diverse aspects, from the very principle of a negotiated settlement because “it rewards terrorism” or “the use of violence”; to its modalities because “those at the negotiating table are not sufficiently representative”; and to its outcome, because compromises “fail to match the aspirations” of the combatants themselves, their supporters or other domestic constituencies.

To say that peace processes are never unanimous affairs is not to say that how the issue of local legitimacy is handled is inconsequential. In fact, faced with opposition from those who, among the belligerents and within society at large, are convinced that the continuation of conflict is a better alternative to a negotiated settlement, a peace process will not thrive unless it is able to generate a critical mass of domestic legitimacy.

Legitimising negotiations

To a large extent it is the course of the war itself that will be the critical factor. The current Afghan conflict offers a perfect illustration of the ripening work of war. After 10 years of widening and worsening conflict with no military solution in sight, the 2011 decision taken by the North Atlantic Treaty Organisation to support dialogue with the Taliban, which would have been unthinkable in the early 2000s, is a case in point.

But more important from the viewpoint of local legitimacy is the moving statement by Member of Parliament and woman activist Shukria Barakzai explaining why her stance against negotiations with the Taliban changed: “Everybody has been trying to kill the Taliban, but they’re still there, stronger than ever. They are part of our population. They have different ideas but as democrats we have to accept that. Every war has to end with talks and negotiations. Afghans need peace like oxygen. People want to keep their villages free of violence and suicide bombers”.

As the prospect of a favourable end to the war recedes, misgivings about the legitimacy of negotiations do not go away entirely, but the realisation emerges that, as William Zartman emphasised in 1995, the imperative of bringing the war to an end is inseparable from “a basic acknowledgement of the legitimacy of internal dissidence” and a recognition that insurgents “are assumed to have a point and represent legitimate grievances”.

In his 2010 Compton Conference lecture, then UK Foreign Secretary David Miliband gave an eloquent illustration, in relation to the Taliban, of this process of legitimisation inherent in the recognition that an alternative to a military solution has to be found: “Without a genuine effort to understand and ultimately address the wider concerns which fuel the insurgency, it will be difficult to convince a significant number of combatants that their interests are better served by working with the government rather than by fighting against it. Some insurgents are committed to al-Qaeda’s violent extremist agenda ... but the majority are not. They share conservative Islamic
beliefs and, linked to that, strong views about what is a just social order”.

That it should have taken many years of an increasingly destructive war before the legitimacy of a negotiated settlement should become widely – even if not universally – recognised in Afghanistan confirms that wide disruption, loss of life and the elusive prospect of a victorious denouement do not translate quickly into a broad willingness to support a peace process.

But the cost of war is undoubtedly a major factor. And, in this respect, generating a critical mass of domestic legitimacy for a negotiated settlement is a particularly challenging task in low intensity conflicts, and in particular when only a limited part of the territory and a narrow section of the population are directly affected by the war.

Robert Clark identified the predicament in his 1995 analysis of precisely such a conflict: the confrontation between the Spanish government and Euskadi Ta Askatasuna (ETA). Describing the multiplicity of actors with an interest in the conflict, he observed: “Most of these groups have multiple priorities; a settlement with ETA is an important goal for them, but not an imperative one, and the cessation of violence is not the most important objective of any of the parties”. Further: “Most of the other interested groups want an end to the violence, but on their own terms”. And indeed, as pointed out by Teresa Whitfield, the issue of whether or not Spain should embark on a peace process with ETA remained highly contested until a subterranean form of “virtual peacemaking” contributed to an end to its violence in October 2011.

In this climate of conditional support for a settlement, a peace process cannot rely on legitimisation brought about by the unbearable cost of war; it is required to address squarely the task of constructing the legitimacy required to prevail over the supporters of the continuation of conflict.

Building legitimacy: representation, participation and performance

The Guatemala peace negotiations (1991–96) offer a good illustration of this challenge. In the late 1980s and early 1990s the notion of such a peaceful settlement faced outright hostility from the powerful economic and military establishment. Guatemalan elites were convinced that the continuation of the then very limited military conflict was a safer option than negotiations with the guerrilla leadership, which would entail precisely the legitimisation of its struggle and its political agenda.

Under these circumstances, the peace process could not thrive unless it made itself attractive to a wide spectrum of interests, and established itself in the eyes of the public at large as a legitimate and viable endeavour. And to a large extent, over a period of six years the negotiations did succeed in this, not least by availing themselves of three classic sources of domestic legitimacy: representation, participation and performance. From 1994–96, the peace process also made ample use of a fourth source – international support and endorsement – to which I will return later.

In relation to representation, by the end of 1994 both parties to the negotiations had defined their process no longer as a bargaining exercise between government and insurgency over the settlement of their conflict, but rather as a joint effort to develop a broad national agenda covering a gamut of interests and issues, and in particular those ethnic, social and economic fractures that had plagued the formation of the Guatemalan society and state.

I recall a situation in 1996 when an observer cautioned against the excessive scope of this national agenda, only to be told by a member of the government delegation that the peace negotiations offered a unique opportunity to overcome long-standing obstacles to national development, and this opportunity could not be missed. In the same spirit of maximum representation of social interests, in late 1996, at the specific request of women’s organisations, the parties included in their agreements a provision for the establishment of a Women’s Forum as part of the implementation process.

With regard to participation, the parties agreed to the creation of a Civil Society Assembly under the leadership of the Catholic Church that brought together a wide spectrum of social, economic and religious organisations, including indigenous organisations, trade unions, churches, women’s organisations, journalists and many more. The assembly was asked to put together consensus papers on each substantive issue on the negotiating agenda, and present them to the negotiating parties ahead of their own consideration of these agenda items. Further, it had the power to accept or reject the outcome of the negotiations.

The assembly had limitations in terms of participation – the powerful private sector and conservative organisations boycotted it – but its very existence consolidated the national credentials of the negotiations.

With regard to performance, the Guatemalan negotiations adopted a “gradualist” strategy, not unlike the South African peace process, through the implementation, well ahead of the finalisation of the negotiations, of a sequence of measures that served as a demonstration of the willingness and ability of the two parties to address their mutual concerns.
These measures served to build confidence between the two sides, but they also served to build public confidence in the peace process. Most notably, this confidence-building process included the 1994 deployment of a UN human rights verification and institution-building mission that was active throughout the country for over two years before the peace accord was signed. Thanks to this very tangible presence, which captured the attention of public opinion from its very inception, the peace process no longer appeared confined to distant hotels where negotiations were held, or to debates among non-governmental organisations (NGOs). It became a fact of life in the country, and generated a widespread perception that a watershed had been reached and the transition from war to peace was now irreversible.

The benefits of participation and representation in terms of legitimisation of a peace process are well covered in the literature on peacemaking; less so, the need for a protracted peace negotiation to perform in the public eye without waiting for the conclusion of the peace talks. This can be critical to public support, always threatened by the inevitable setbacks, delays and impasses that are common in any civil war settlement.

Performance legitimacy is one area where the international community can be particularly helpful. Negotiations between a government and an insurgent group ordinarily face a predicament when it comes to confidence building on a larger scale, beyond such narrow measures as an exchange of prisoners. There are only so many concessions a guerrilla group can make, particularly if it is not prepared to declare a truce or a ceasefire. And for its part the government, whose palette of confidence-building measures is obviously larger, cannot appear to be making unilateral concessions and bear alone the burden of demonstrating good faith.

Agreeing, during the negotiations, to the immediate deployment of the UN human rights mission enabled the government to give a powerful demonstration of its commitment to human rights. It was for the guerrillas a way of demonstrating their recognition of the state institutions the mission was mandated to strengthen. With the conflict ongoing, both demonstrations could hardly have been made otherwise. And, as mentioned earlier, the mission’s deployment was a public demonstration of the peace process’s viability that the parties to the conflict could never have accomplished on their own. When field conditions permit, there is a gamut of such international measures that can be harnessed to that end.

The dangers of overselling

Guatemala illustrates how a process that struggles against powerful detractors in a society where the war has become relatively marginal can become a viable proposition: by broadening its agenda, expanding its political base and defining itself as a credible tool for change. But it is important to remain aware of the context in which the process unfolded, to understand its limitations and most of all to avoid the all-too-common idealisation of the quest for local legitimacy as a peacemaking strategy.

Guatemala ranks among the peace processes that made the most determined effort to broaden its agenda and to maximise civil society participation. All the same, as Conciliation Resources observed in 2009, “none of the most participative processes so far resulted in fundamental redistribution of wealth despite the fact that addressing economic inequality was cited by most armed movements and by civil society as a central goal”.

And it is not only the effectiveness of this broad participation in terms of outcomes that raises questions, it is also its depth in political terms: at the end of 1996, the Civil Society Assembly unanimously endorsed the substantive accords reached by the parties. But two years later the main constitutional reforms proposed in the peace accords were defeated in a popular referendum. There are a host of reasons behind that defeat in addition to the limited representativeness of the assembly. Still, the participants in the peace process were undoubtedly overconfident in the depth of public support for the “national agenda” approved with such unanimity by civil society organisations.

The lesson is not only to guard against excessive expectations of what participation can deliver. It also concerns the critical issue of implementation. A proliferation of goals, as it is typically promoted by the search for representation and participation, is no guarantee that the issues included in the “comprehensive agreement” will actually be addressed. Quite the contrary, it can and often does result in a dispersion of the limited political capital and material resources available to implementation.

And, as important as the limited amount of political capital available to support reform, is the amount that is devoted to see it fail. In that sense, a comprehensive agreement is at risk of suffering the same fate as the comprehensive approaches to reform that Samuel Huntington has described: “They failed because their efforts to attempt so much mobilised so many opponents. Virtually all the social groups and political forces with a stake in the existing society felt themselves threatened”.

The Guatemala peace process followed the path of the broadest possible domestic legitimacy – and under the political and military circumstances I am not sure another
option was available. But it did pay a price with an outcome that the domestic political market could not bear once the war was over. At any rate, from an implementation viewpoint a tighter peace agenda, more strategic and more consistent with the actual balance of political forces, might have been more appropriate, and less likely to suffer a backlash of frustrated expectations among its supporters. In this respect, the pursuit of constitutional reforms in a country where these required approval through referendum may simply have been a bridge too far, even though reforms enjoyed significant popular backing.

The lesson from the Guatemalan experience in relation to local legitimacy is twofold: broad legitimacy is so critical to the success of a peace process that when it does not emerge as a by-product of the unbearable cost of war, it has to be constructed. At the same time, a strategy to gain national legitimacy also involves trade-offs. It cannot be pursued in a linear “more is better” way. Context and the complex interplay of political and social forces are paramount.

**International community and legitimacy**

As mentioned earlier, international support is undoubtedly another significant source of domestic legitimacy. Consistent political and material support from influential states and international organisations can help reassure the supporters of the peace process, deter its detractors and sway the undecided. Would the Guatemalan peace process have survived politically without the unambiguous and public support of such long-standing influential foreign actors as Mexico, Spain or the United States?

One would certainly be entitled to suggest that if the peace process had not been completed before 2001 and the start of the Global War on Terrorism, it could have suffered major setbacks in the post-9/11 international climate, when the rhetoric of counter-terrorism displaced the earlier strong commitment to the negotiated settlement of civil wars.

Paradoxically though, while the international community can be a major contributor to domestic legitimacy, it seems to become more and more grudging in conferring international legitimacy to peace processes. The 2012 United Nations Guidance for Effective Mediation summarises perfectly that development:

> Mediators [...] 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.

And, as everyone with some experience of peacemaking and peacekeeping knows, this is only a sample of the international demands ordinarily placed on peace processes.

Faced with such an all-encompassing set of international norms, one may wonder how much substance is left in the concept of “national ownership”, or what party to a conflict would want to involve the international community in peace negotiations when it is committed to such an intrusive agenda of its own. In addition, because you cannot escape the plague of double standards in international relations, it is wise to assume that when powerful members of the international community will find it imperative to bring to an end a civil war that affects them directly, the international community will not be so demanding in relation to the “normative expectations” to which the peace negotiations should be subjected.

But the more important question is: what relation do these normative expectations bear to peacemaking? Does consistency with this normative framework contribute to reinforcing “the durability of a peace agreement” as argued in the UN Guidance? In their 2002 analysis of the similar normative framework that came to be developed for peacekeeping operations, Steve Stedman and George Downs did not think so, and they did not mince their words:

> Mandates for peace implementation missions in the 1990s have suffered from an inflation of goals – goals that have been included in the mandate less for realistic calculations of possible accomplishments, than as a way of appeasing non-governmental organisations and domestic public opinion. As the
1990s progressed, the lobbying of NGOs, especially those involved in human rights, pressured member states to include more and more sub-goals in UN peace operation mandates.

The intervention of politics aside, it would be unfair to claim that expectations listed by the UN Guidance are unrelated to peacemaking. Many of them are issues that will come up in the course of a peace process. They often have developed local constituencies and are at the heart of local dilemmas. Their degree of relevance will vary according to context, but they will most likely feature prominently in Guatemala-type situations, where the peace process must embark on the construction of broad national legitimacy in order to prevail.

But they are not peacemaking norms. A quick comparison of peace processes over the past 25 years shows no evidence that the absence of amnesty, the existence or absence of provisions on truth and reconciliation, or the inclusion of civil society have made a difference in terms of the durability or sustainability of those peace processes. What past experience does bear out is the complexity of the choices each one of these issues involves.

As discussed earlier, inclusivity has its upsides and its downsides, to be carefully balanced in each particular situation. In some contexts, truth-seeking can result in acute polarisation rather than reconciliation because no amount of independently established facts about the past will cause the main war narratives, and the core values they carry, to fade away in the immediate aftermath of a violent conflict.

And the issue of criminal prosecution for past crimes raises the most daunting challenge of all, because no party to a conflict – short of capitulation – will sign a peace agreement if they expect that criminal prosecution and imprisonment will follow. The Guatemalan army would certainly not have signed the peace accords in 1996 had they expected that senior officers would end up being prosecuted on charges of genocide.

The important point is that the international community should tread much more carefully than it is doing nowadays with the mushrooming normative framework to which it claims to subject peacemaking. However attractive it may be to fuse peacemaking requirements with all the other values the international community currently stands for, this temptation must be resisted, not embraced.

And current international demands need evidence-based validation before they need further advocacy. What Priscilla Hayner said in 2002 in relation to truth-seeking has broad application in the field of normative peacemaking today:

“Some of the most oft-repeated statements, and those that we perhaps most wish to be true, are due careful scrutiny. Indeed they don’t always hold up well even under a test of anecdotal evidence”.

Recovering mediation space

From George Modelski in 1964 to William Zartman in the 1990s, and a wide range of others who have followed in their wake, scholars have attempted to show how and why the international community can play a unique role in bringing civil wars to a negotiated settlement. Together with the lessons learned from the post-Cold War peacemaking experience, this heritage was nearly lost to policy circles in the decade following 9/11.

The fundamental premises of negotiated settlements – dialogue with insurgencies and recognition of their grievances – were anathema to the international counter-terrorist consensus. Countries that would have been active Friends of peace processes a few years earlier instead championed the establishment of “terrorist lists”. So did the UN, which should have known better based on its extensive experience with peacemaking in the 1990s. The retreat from the ethos of negotiations went so far as to lead Charles King to conclude in 2007 (under the telling sub-heading Returning to Victory?) that “the moment when policymakers worked at quelling wars – rather than just taking sides in them – may well have passed”.

With the failure of the military option in Afghanistan and the dubious outcome of military interventions elsewhere, the counter-insurgency discourse appears to be losing its ascendancy and the principles of peacemaking are making a comeback. If the international community is ripe again for a constructive involvement in ending civil wars, if the situation in Syria, Afghanistan and elsewhere requires it, it would be a dramatic disservice to peacemaking if the mediation community – in governments, international organisations and NGOs – now at liberty to engage, should allow itself to be constrained, no longer by international opposition to negotiations, but by well-meaning but ill-founded prescriptions for international legitimacy.

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