Accord 25 project and publication

Legitimacy and peace processes

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Workshop Report by Achim Wennmann[1]

Introduction

Legitimacy is widely recognised as critical to peace, development and effective governance. It has experienced a revival in interest in the last few years especially in relation to peace and national dialogue processes and political transitions. The *New Deal for Engagement in Fragile States*, for example, agreed jointly by donor and conflict-affected countries in 2011, emphasises legitimacy in the first of five Peacebuilding and Statebuilding Goals, which stresses the role of 'legitimate politics' to 'foster inclusive political settlements and conflict resolution'.

This Accord project is investigating the multiple roles of legitimacy in peace processes, in order to provide practical insights for local and international actors on how legitimacy can contribute to making peace more sustainable.

The project connects with a number of conceptual and practice innovations in peace processes. On the conceptual side, recent years have seen advances in understanding of governance in conflict-affected contexts, such as how to operate in *hybrid* political orders that include both formal and informal governance structures. On the practice side, innovations in mediation support have included the International Contact Group in the Philippines – the first ever formal mediation support initiative involving international non-governmental organisations as well as states; the use of social forums to mobilise civil society in the Basque Country; or multi-level, cross-sectoral peacebuilding initiatives in Colombia.

The report takes a broad understanding of peace processes, which means that they capture multiple and overlapping initiatives that occur with respect to a specific conflict at the same time. Negotiations can be important to achieve a peace agreement or ceasefire, but are only one part of the total peacebuilding space. In other words, peace processes are understood to be more than just 'track-one' negotiation among elites, but consider the entire spectrum of activities by a diversity of actors at all levels.

[1] Dr. Achim Wennmann is Researcher at the Centre on Conflict, Development and Peacebuilding (CCDP) of the Graduate Institute of International and Development Studies in Geneva, and Executive Coordinator of the Geneva Peacebuilding Platform. Dr Wennmann is Issue Editor of the Accord 25 publication.

This report provides a synthesis of a Joint Analysis Workshop that brought together 38 experts, practitioners, policymakers and stakeholders in peace processes from a diversity of backgrounds for a two-day reflection on the Accord theme. The report distils the main points of discussion and is intended to inform the development of the forthcoming Accord publication – due out in early 2014.

The report is structured in seven main sections, each representing a workshop discussion, and concludes with a few overarching observations. Each section proposes a series of key 'take-home' points with the intention to foster continued dialogue on the topic of the Accord 25 theme, as follows:

1. *Legitimacy in peace processes*
2. *Inclusiveness*: the relationship between inclusiveness and legitimacy in peace processes, and how inclusiveness affects pathways towards more sustainable peace
3. *Transformation of coercive actors*: experiences of coercive actors to engage in processes of political transition, including gangs, armed groups and authoritarian regimes
4. *Constitution-making*: the role of constitution-making in political transition out of war
5. *Local governance*: the capacity of local governance structures to engage citizens in peace and transition processes
6. *National dialogue*: lessons of national dialogue processes with respect to legitimacy, peace processes and political transition
7. *Measuring success*: the role of monitoring and measuring tools to increase the local accountability of peace processes

1. Legitimacy in peace processes

Legitimacy is at the heart of peace and politics. Different actors make claims to legitimacy and these can compete with each other, especially in situations of violent conflict. Even in contexts where the state plays an effective role, other powerful actors can be perceived as legitimate by a large segment of society. Multiple narratives about legitimacy can co-exist at the same time. Dealing with such competing narratives can be a core task of a peace process. Achieving a higher level of legitimacy is something that must be earned by political actors; legitimacy does not accrue to any actor automatically, because it is based on the perceptions of others.

Legitimacy relates to a daily bargain between leaders and constituents. This bargain makes up the political fabric of a country, is the glue that constitutes state-society relations, and is at the centre of public accountability or the lack thereof. The political contest for legitimacy occurs in developed as well as fragile states, as reflected in anti-austerity protests in countries like Spain, Portugal and Greece. Legitimacy is therefore not just an issue for conflict-affected and fragile states, but cuts across developed, emerging and developing states, and across violent and peaceful contexts.

Legitimacy is highly context specific. There can be a large gap between international and local views of legitimate actors or actions. What for outsiders is a 'strongman' may be the most effective security, job or justice provider in the eyes of local residents. In Rio de Janeiro, for instance, many people living in *Favelas* perceive militias or gangs as legitimate because they protect the *Favela* from intrusions by the state.

Multiple sources can contribute to the legitimacy of a peace process. These can include *participation* of a diversity of actors in decision-making processes, so as to ensure breadth of ownership; wide *representation* of issues, views or values in a process; and *performance* of an actor or process to deliver, such as providing security, welfare, justice – or peace.

A peace process gains legitimacy through acceptance by a broad spectrum of constituencies. The diversity of constituencies includes, for instance, political parties, business councils, and church and community groups. Broad acceptance of a peace process is widely considered crucial for the achievement of sustainable peace.

Maintaining legitimacy through non-violent means is extremely difficult in many contexts. Negotiations and violence can occur side by side. Relying only on non-violent means to build legitimacy is often an unrealistic assumption, especially in contested urban spaces and illicit markets, or divided populations. Historically, the use of violence has been a critical tool to establish the legitimacy of rulers and to build states. Over time, this experience has translated into the notion that states have a monopoly over the legitimate use of force. Power and political economy considerations are important in understanding legitimacy.

Building legitimacy of a peace process can be easier in high-intensity conflict. Where populations have suffered years or decades of high levels of violence, negotiations that result in ceasefires and peace accords to end the fighting strengthen the 'performance legitimacy' of the process, as people see tangible benefits. This can be more difficult in low-intensity conflict, where people yearn for less conspicuous or immediate outcomes relating to justice or livelihoods, or a workable vision for the future.

2. Inclusiveness

A peace process affects the whole of society and thus requires the participation of everybody. In several contexts, actors have come to realise that peace processes require the involvement of the majority of the population in order to stick over time. Inclusiveness can also relate to substance, as processes evolve to address a broad range of issues, including cross-cutting issues such as gender, welfare and crime.

Inclusiveness can be achieved in many different ways. Traditionally, inclusiveness has been understood in terms of representation at the negotiating table. But there is an emerging trend to think beyond formal talks. For instance, while a process to reach a ceasefire agreement can be driven by

relatively small group of stakeholders, discussions about new visions for the future, the need for justice, or expanding new economic opportunities can occur in many different spaces. There can be multiple processes with different groups, including with 'difficult' or controversial actors.

Ensuring links between horizontal and vertical levels is important to ensure inclusiveness. Many peace processes only focus at the national level without connecting a process downward to district or local levels, or upward to regional or international levels. Similarly, many peace processes only focus on political and military sectors, leaving out important opportunities for horizontal connections to business or non-governmental sectors. The quality and degree of horizontal and vertical links can be a complementary way to conceptualise an inclusive peace process.

But greater inclusiveness can raise expectations. Expanding participation in a peace process can increase expectations among larger numbers of people, placing a greater emphasis on managing peoples' expectations of what a process can really deliver. Disappointment can become an important rallying call for renewed violence and has been a challenge to many peace processes and political transitions.

There are practical challenges to operationalise inclusiveness. Some groups lack political or technical capacity to engage in peace processes. For example, due to the diffuse nature of a particular group, overdependence on one leading figure, or weak negotiation or communication skills. These challenges raise questions over limits to inclusion, or when inclusiveness becomes unmanageable. The practical challenges to participatory decision-making link to tendencies for narrow approaches to peacemaking that appear exclusive or 'undemocratic', and a degree of pragmatism of what level of inclusion can be expected in pressured and complex peacemaking contexts. Anti-terrorist or criminal legislation can further limit inclusive approaches, especially when they are used to deny key actors' involvement in talks.

Careless application of inclusiveness risks contributing to international 'norms' and standardised templates for peace processes. This ignores both the practical challenges of inclusiveness and the fundamental requirement to respond to local realities. International demands for a standardised set of elements for a peace process encourage formulaic responses that can jar with the specific needs of a given context. Many international actors increasingly see inclusiveness as a critical part of a peace process, where inclusiveness is understood in terms of negotiations and dialogue and emphasises the participation of specific social groups.

3. Transformation of coercive actors

El Salvador

Recent truce negotiations between rival gangs in El Salvador were largely seen as illegitimate. Especially the middle and upper classes opposed negotiating with gangs, whom they saw as criminal and responsible for death and destruction. Negotiations nevertheless went ahead discretely

between two gangs accompanied by two facilitators, based on the recognition by the parties that the level of violence was no longer sustainable. Once the truce negotiations became public, discussion about the legitimacy of the process took centre stage.

The transformation of gangs from illegitimate to legitimate actors in Salvadoran society is contested. While the gangs agreed to stop violence, many other practices such as extortion and threats of violence remained. Fundamental distrust has continued and conflicting perceptions among the different constituencies of Salvadoran society will take decades to change. Nevertheless, the truce led to the establishment of 'peace zones' in which gang and non-gang populations are seeking to help youth exit gangs permanently.

Gang leaders used negotiations to increase internal legitimacy. But they also recognised the need for broader social legitimacy to consolidate the truce. Gang leaders strengthened internal control over group membership and territory. But as the truce moved forward, they also realised the need for social acceptability so that peace zones could continue to survive. This could mean the entry of gangs into politics such as through the establishment of organised political wings. A critical test will be if peace zones stay violence-free and if the quality of life for people living in them increases. If yes, gang leaders will likely gain in internal and external legitimacy, but the on-going practice of extortion remains an obstacle.

Burma

Legitimacy in Burma is contested at many levels. This includes legitimacy of the government and opposition parties, as well as representation of minority populations. Legitimacy issues are at the heart of Burma's political transition. A key driver of transition is that everybody wants change and that there is political will from the president and key ministries to support it.

The roadmap for ongoing political transition in Burma is aiming to maximise inclusiveness. The roadmap is being developed as part of efforts to establish a national dialogue process, and is composed of 12 task forces and seven thematic issues. The task forces focus on power sharing, security reform, resource sharing, judicial reform, land, infrastructure development, labour, education, language and culture, religious rights, non-discrimination and health. Thematic issues include humanitarian concerns, national reconciliation, drug eradication, refugees and the internally displaced, tourism, mediation and civil society.

Political transition needs to find a pragmatic response to clientism. Clients are entrenched in the old order and have established control over many parts of the Burmese economy under the protection of the military regime. They are powerful and a significant challenge to political transition. If they remain untouched there is a real risk that transition will only be superficial, with little legitimacy especially in the eyes of marginalised actors.

4. Constitution-making

Constitution-making processes are consensus projects. Constitutions define the 'rules of the game' of a country's political and social life. There is an emerging trend that political transitions or exits from civil war are accompanied by constitution-making processes, with the objective of defining new political arrangements. Be it Somalia, Egypt, Kenya or Fiji, constitution-making processes have provided a critical negotiation space for a diversity of political actors and society.

For many international actors constitution-making has become part of a normative sequence of conflict termination or political transition. This sequence typically involves a ceasefire, a new constitution and free and fair elections, all of which are framed under the umbrella of the state or state institutions. Constitution-making processes are 'legitimating', in that parties to conflict are given opportunities to transform from rebel groups or repressive military regimes into political parties or political orders with civilian oversight of the military.

Uncritical application of constitution-making processes as an automatic response to conflict is risky. It may contribute to hardening political relations at a time when the situation on the ground remains fluid. It may also lead to a constitution that is disconnected from the situation on the ground or lacks sufficiently broad participation, which can in itself be a reason for new political contests and renewed violence. Especially in contexts where a constitution is seeking to frame a new multi-ethnic diversity, a constitution-making process can lead to the reconfirmation of ethnic identities thus pushing parties into entrenched identity patterns.

Constitution-making processes take time. There is tension between the current tendency to rush constitution-making as part of rapidly evolving political change or conflict termination, and the time it takes for constitution-making processes to really take root. In the former Yugoslavia or former Soviet Union, making new constitutions took many years and was a domestic political and legal process. The current rush to come up with new constitutions in a few months or even years is risky, especially if the impetus is international, because they may be perceived as top-down or externally imposed, rather than a social transformation process that is broadly and locally owned.

Sophisticated technical assistance is available to accompany constitution-making processes. Given the pervasiveness of constitution-making there are many technical experts within the UN system and within specialised organisations that can provide expertise, for example in negotiation or drafting. What is often difficult is to find local constitutional experts that can help ensure context sensitivity, especially with regards to the historical trajectory of a country or region.

5. Local governance

Local leadership and ownership is a critical element of sustainable peace. Peace is inherently 'local' – ie as close as possible to both the conflict problems and solutions. Local leadership and ownership is what makes peace sustainable – or makes peace 'stick'. It is a well-established principle in much peacebuilding practice.

But operational frameworks to support leadership at the sub-national level lag behind. International actors understand local leadership primarily in terms of the state and state institutions. But in many complex transitions, conflict and peacebuilding dynamics essentially occur at the sub-national level and it is here that support could be most effective. In contexts such as Afghanistan, Syria, Libya, Mali, or the Democratic Republic of the Congo (DRC), sub-national engagement is inherently sensitive, especially where strongmen, criminal groups or religious extremists enjoy broad acceptance by a significant part of the population. There are many open questions with respect to the provision of mediation support by internal or external actors in contexts of contested legitimacy.

Darfur exposed a common disconnection between the micro-dynamics of conflict and international responses. In Darfur the international peacekeeping response was modelled at the peak of the violence in 2003 and 2004, when the conflict dynamic represented a type of situation that the UN could understand and respond to: a major armed conflict between two discernible parties. By the time the UN peacekeeping force was eventually deployed the primary nature of the conflict had changed to more complex violence between different sub-national actors, and the peacekeepers' mandate was now less suitable. This illustrates common differences between local realities and the design of international responses.

Local people are best placed to make an accurate diagnosis of the conflict – and also to define the response. In Darfur, local people understood well the 'epidemiology' of the conflict as a local manifestation of broader political crisis across the Sudanese political system. The African Union was able to engage local people to get their views on the conflict and how to respond most appropriately and effectively. But the resultant AU plan failed to gain international traction or support and was never implemented.

Local leadership structures can be extremely fluid in times of conflict. This is challenging for local and international actors. The absence of reliable information and the speed of change on the ground makes the context difficult to understand. In Syria, observatories have emerged as local responses to understand dynamics of violence and track casualties. They draw on new information technologies and social network tools to track developments, and account for and report on deaths and situational intelligence.

Local leadership is often fragile and its legitimacy subject to intense infighting. In Syria, local peace committees have been operating under extreme stress to maintain basic service delivery during the civil war, as well as the increasing burn-out of local leaders and the absence of funds. Local peace committees often became dependent on a few local leaders. But as money ran out and leaders fled violence, many local peace committees collapsed. At the same time, the space for local governance was contested. For example between *jihadists* who claimed legitimacy on religious grounds and established religious bases for administration, such as *sharia*. This encouraged some local competition between religious and secular sources of authority, which was exacerbated as many *jihadists* also

enjoyed external funding that secular administrations did not, undermining the latter's capacity to deliver services.

UN agencies and departments lack capacity to develop context sensitive analysis as part of their efforts on the ground. Within the UN, there are scant dedicated mechanisms or procedures to analyse the large amounts of detailed field data that UN missions routinely collect from conflict zones. Much conflict analysis is over-reliant on macro-level data and ignores grassroots accounts or narratives. UN data could be better used to inform peacebuilding programming more precisely.

6. National dialogue

There is a tendency in mediation support to move away from external mediation to national dialogue processes. These processes place more emphasis on local ownership of a peace process and its outcome. The shift from external mediation to national dialogue has been associated with the decline in inter-state and civil wars relative to the increase in turbulent political transitions.

National dialogues are inherently context sensitive in their design, which aims to reflect local realities such as the political culture of the country, constitutional weaknesses or the level of exclusion of major groups. National dialogue also champions context knowledge over technical know-how. They are not about imposing a process or sequence, but about a process that is designed and owned locally, which allows local actors to exit from violence and define their own pathways towards a more stable and prosperous future. The focus on context sensitivity does not preclude international involvement or interests, which themselves influence the dynamics of the process.

National dialogues present an action framework for participatory peacemaking in fluid transitions. They are primarily long-term – lasting on average between three to seven years; are more likely to survive interruptions or breakdowns in the process compared with external mediation; and are intended to be flexible and adaptive.

But there is a risk if national dialogue becomes another part of a standardised international template. This would undermine its potential to encompass context sensitivity and local knowledge, where the very act of establishment of the dialogue becomes more important than the quality of relationships and substantive agreements that it may help to promote. National dialogues that are imposed externally do little to increase the legitimacy of peace processes, as outcomes and agreements would be insufficiently grounded and owned so as to make a lasting impact. Ensuring the diversity of adaptation of national dialogues is essential to ensure they remain an adequate tool for conflict resolution and political transition.

National dialogues processes are adaptable and come in different shapes and sizes. For instance, in the Basque Country the national dialogue has been unfolding from the development of a Basque citizens' network, which has been trying to generate impetus and civil society participation in a peace process and could act as a link between the Spanish government and *Euskadi Ta Askatasuna*

(ETA). In Burma, the national dialogue process has been building momentum to end 60 years of military rule and violent conflict, and to consolidate government efforts to negotiate ceasefires with at least 20 different armed groups simultaneously. The process has built legitimacy by offering greater participation to opposition parties in political life and by ending censorship practices. It has been mainly internally driven with minimal external participation.

National dialogues are not perfect and face many challenges. For instance, they have failed when they have had insufficient mandate, when their objectives and agenda are contradictory to the participants' expectations, when participation criteria exclude important groups, when there are no safety nets or support structures, or when the process does not help to create a new national vision and social contract.

7. Measuring success

Measurement tools must be applied with caution in fragile settings due to low quality or missing data. There is increasing pressure that peacebuilding policy be evidence-based. But official or administrative data sources are frequently out of date or incomplete. Poor data provide a distorted or erroneous picture. In fragile contexts it is critical to use alternative information sources and measurement methods, including stories and testimonies – although these also need to be interpreted cautiously as they may emphasise certain phenomena through selection bias.

Perception surveys are important to identify popular acceptance of authority, and thereby provide a potential measure for legitimacy. For example perceptions of delivery of public services as a yardstick for 'performance legitimacy'. Barometers measuring political attitudes are now common before elections in many countries. Not surprisingly, many local or national governments are sceptical of them for fear of exposure that they lack public endorsement. When nationwide surveys are conducted by outside actors, national authorities also feel that such efforts infringe on their sovereignty. National authorities do not like to be ranked, and often stress that indices do not capture the cultural and historical uniqueness of each country. Perception surveys need to be sufficiently specific to be able to provide practical insights for national policymakers.

The use of surveys in the absence of a culture of free speech can be sensitive. Respondents may not trust the survey. They may answer questions hesitantly for fear of retribution, or say what they think surveyors want to hear. Surveys can therefore fail to capture what people really feel. To manage such distorting effects, many surveys include control questions to identify inconsistencies in survey responses. Participation in surveys by people who have never been asked their opinion can also create expectations that can lead to frustration. Conversely, after multiple surveyors have done their job but still nothing has changed on the ground, people may question the utility of participating.

A diversity of measurement tools can help to develop a more complete picture. Surveys may be able to gather opinions, but this process may just reify perceptions that are known to be inaccurate. Surveys need to be triangulated with other quantitative or qualitative methods to establish a

more complete picture. Spatial and temporal disaggregation is also key, given that violence does not occur everywhere at the same time but is clustered in 'hot spots' at specific moments.

Observatories offer a systematic tool for ongoing monitoring and data collection. In order to improve the quality of analysis and data, many fragile contexts are experiencing a proliferation of observatories. These can focus, for instance, on armed violence or quality of life at local municipal or national levels. Observatories respond to ensuring local ownership or leadership of data gathering processes and of the conduct and dissemination of analysis. They can range from systematic information management systems to smaller observatories.

There are many potential opportunities to use qualitative or quantitative tools as monitoring devices for peace processes. Observatories, surveys, or fragility assessments can provide important data and analysis that can be made available for peace processes. Especially in contexts where society is trying to develop a new vision for the future, such tools can contribute to establishing a baseline or evidence base, which can help define the bounds of the new vision and manage expectations. Such measurement efforts can therefore be part of a political transition or peace process. They are also inherently political as survey results or baseline assessments invariably challenge or support existing political narratives of the government or opposition parties, or long held beliefs and convictions.

Conclusions

This report has explored the complex and contested roles of legitimacy in peace processes. Legitimacy is particular to contexts, circumstances and communities, and does not transfer readily from one situation to another. It has multiple sources (formal and informal): participation, representation, performance and international. Legitimacy is subjective, in that political systems are legitimate to the extent that people perceive them as acceptable. In conflict-affected societies, actors can exploit various versions of legitimacy to enhance their own power and interests. For non-state actors, the coercive capacity to defend vulnerable people is often a key source of their legitimacy. And the legitimacy of states' application of violent power is relative and often divisive.

Two overarching observations about legitimacy and peace processes can be drawn from discussions at this Accord workshop. First, **peace processes must prioritise local legitimacy and ownership, and address the needs of the specific context**. Increasing the level of legitimacy of a peace process means adjusting the toolbox to the context, and not the context to the toolbox. This prioritises local input and ownership of the process – in design and implementation. Working 'from the context upward' is especially important for national dialogue and constitution-making processes as well as electoral support, which otherwise risk becoming parts of a standardised international template. Local legitimacy and ownership can help to increase the likelihood that a peace process will 'stick'.

Second, **space for the transformation of 'illegitimate actors' must be better protected.** This is especially important at the beginning of a peace process, which is often opaque and little

understood. Mediators need to reach out to individuals or groups that are considered taboo – 'terrorist' or 'criminal'. Practical peacebuilding challenges include how to support transformation of a peace process from murky beginnings into a legitimate process, or the transformation actors from illegitimate into legitimate members of a society, for example rebel groups into political parties. Challenges of transitional justice are especially complicated where boundaries of violence are blurred between political and criminal. Here, the initiation of transformative processes is highly vulnerable and may need to be more carefully protected, for example in relation to criminal and counter-terrorism legislation as it relates to peace processes and political transitions.