Conflict Parties' Interests in Mediation

Hans J. Giessmann and Oliver Wils

What is this Policy Brief about?

Experience has shown that mediation contributes positively to solving violent conflict. In order to improve mediation practice and support activities
this brief takes a specific perspective on mediation through the lenses of conflicting parties.

Why is the topic relevant?

Why are conflicting parties interested in mediation? What processes and support do they expect? What
are their criteria for choosing or accepting a spe-cific mediator? So far, little attention has been paid
to these questions. The answers have substantial implications for mediators, mediation approaches and
support activities.

For whom is it important?

International organizations, governments, interna-tional
and local non-governmental organizations
and specialized think tanks and research centers involved
in mediation, mediation support or research on mediation.

Conclusions

- The motivation of conflict parties to seek mediation is driven by self-interest. Third-party mediators need to understand these interests and be aware of the fact that they might differ considerably not only between the parties, but also the major factions within the parties.

- If the conflict parties realize that they cannot manipulate the mediator, they will expect that he/she takes responsibility for a fair and responsive process. Third-party mediators need to guarantee that a certain level of parity and multipartiality is maintained.

- For the conflict parties it is an asset to have a choice regarding mediation offers. Third-party mediators need to acknowledge and use the advantages of complex mediation systems, e.g. for risk and burden sharing, and joint learning.

- Conflict parties trust insider mediators, who often play a vital role in inter-party dialogue, as trusted messengers, and more. Third-party mediators need to acknowledge and strengthen their key role, and support adequate means of cooperation and consultation.

About the editors

Berghof Conflict Research (BCR) identifies root causes of protracted violent conflict and carries out research into actor-inclusive approaches for peaceful conflict transformation. These crucial research findings are adapted to practical proposals for political action by key conflict stakeholders, state- and non-state actors, and civil society organizations.

Berghof Peace Support (BPS) was founded in 2004 and, as a practice-based organisation, seeks to implement innovative concepts and approaches to respond in effective and sustainable ways to the global challenges presented by violent political conflict.

About the authors

Dr Hans J. Giessmann is a University-Professor and Director of Berghof Conflict Research.
Dr Oliver Wils is Executive Director of Berghof Peace Support.

Contents

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1. Background, objectives and structure

The following paper was originally written on request of the United Nations Mediation Support Unit (MSU) of the UN Department of Political Affairs. It provided assistance for a report submitted by the UN Secretary-General to the UN Security Council in spring 2009.

This revised and updated version of the original paper begins with a clarification of key definitions. The subsequent section (chapters II - III) discusses major points of stakeholders' interests in third-party mediation. Finally, based on our general findings, we present relevant recommendations (chapter IV) for third parties to consider both prior to and during mediation engagement.[1]

The bulk of mediation literature elaborates the functional role of mediation and the requirements and challenges that mediators as intervening third parties can be expected to meet. Considerably less attention, however, is paid to the question of *why* the *conflicting parties* develop interests in third-party mediation at all and what *their* criteria are for choosing or accepting mediators in order to suit their points of view.[2]

While addressing the usual questions of why, when, who, where, and what (Crocker et. al. 2003), this paper takes a specific look at mediation processes through the lenses of conflicting parties in order to make third parties better understand the conflict stakeholders' motivations to engage prior to – and during – mediation processes.

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2. Definitions

Mediation is a political process in which *conflicting parties* (stakeholders) agree to accept one or more third actors who are not party to the conflict, who enjoy the trust of the disputants, and who are considered potentially supportive in overcoming the deadlock triggered by a stalemate in the conflict. It is important to differentiate between official mediation processes (based on a mediation mandate, agreed agendas, rules of engagement, etc.) and unofficial mediation processes (McCartney 2006: 4), including track 2 activities such as dialogue facilitation and problem-solving, as well as local mediation by *insider* mediators. While official and unofficial mediation processes are in principle complementary, reality shows that the lines between them are often blurred.[3]

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[1] We would like to thank our Berghof colleagues for constructive feedback and helpful comments, particularly Amy Hunter, Judith Large, Kate McGuinness, Sebastian Marambio, Stefan Maschinski, Norbert Ropers, Beatrix Schmelzle, Hannes Siebert, Claus-Dieter Wild and Oliver Wolleh.

[2] Most analyses from actors' perspectives concentrate on the issue of "ripeness"; i.e., the moment and circumstances when conflicting parties finally become interested in accepting offers of mediation (Kriesberg 1992, Mitchell 1995, Greig 2001). Their driving motivations for who they will accept as mediators and what kind of mediation they will accept are dealt with far less systematically (i.e. this is only partly covered by Greig and Regan 2008).

[3] This is related to the fact that mediation may become an issue not only on the level of the relations *between* the conflicting parties, but also may be affected by tensions and competing interests *within* their constituencies. The infighting between

Conflicting parties (stakeholders) are the two or more groups of actors in conflict who enjoy the representative support of substantial social or political constituencies, from which they derive the legitimacy for using force.

3. Stakeholder interests in – and approaches to – third-party mediation

3.1 Why do conflict stakeholders seek third-party mediation?

Conflicting parties do not usually opt for negotiations with their 'enemies' because they are willing to make concessions or are ready for compromise. It is rather because they believe that negotiations may serve their interests better; i.e. negotiations will (re-)strengthen their own positions, capabilities or policy options – and sometimes military options, too.

The same is true with respect to third-party engagement. Generally, conflict parties intend to take unilateral advantage of third-party intervention. Their interests in mediation comprise the following list, which is not exhaustive:

- (re-)gaining the political initiative (i.e. trying to seize moral high ground and putting pressure on the opponent to engage)

- enhancing the legitimacy of their own policies and actions

- maintaining the support of an increasingly frustrated constituency

- relieving international pressure

- obtaining (indirect) international recognition

- generating political, technical or financial support

- buying time to regain strength, including military strength

But there are also a number of functional interests that help to explain why conflict parties seek third-party mediation:

First, direct communication between conflicting parties is often highly distorted. Third parties may help to organise and guarantee improved communication structures.[4]

Second, the level of trust between the conflicting parties is often low. Third parties

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competing factions within the Palestinian and Israeli camps over the best strategies during the Oslo Process provides an excellent example of this challenge. See for details Watkins and Lundberg (1998).

[4] This is a common feature in most protracted conflicts. In some cases, such as the negotiations between the LRA and Uganda, the lack of communication became a huge burden to the parties.

serve as observers/witnesses and thus can help to improve the credibility of talks.[5]

Third, the conflicting parties struggle over who controls the negotiation process. Third parties are helpful as they take responsibility for process design; in cases of failure, they can be blamed.

Fourth, in many protracted conflicts there are outside powers (e.g. neighbouring countries and regional powers) which have their own stakes in the conflict. Third-party mediation might help either to constructively bring the interests of these outsiders into the negotiation[6] parties – or (if powerful enough) to keep outside powers away, at least temporarily, from directly intervening[7] (Touval and Zartman 1985).

Fifth, transformations of protracted conflicts tend to become seriously affected by competing status concerns on either side. Conflicting parties hope that mediators will either consolidate or comparatively upgrade their current status vis-à-vis each other in order to strengthen their own legitimacy and international recognition.

In sum, the motivation of conflicting parties to seek third-party mediation is predominantly selfish and interest-driven. However, it is worth considering that the interests behind opting for mediation might not only differ considerably between the conflicting parties, but also between different factions within these parties.[8]

3.2   When do conflict stakeholders seek third-party mediation?

As a general rule, conflict stakeholders consider impartial mediation to be a risk and rarely engage third parties voluntarily – unless such involvement promises certain benefits to them. Thus, calling on third parties for mediation is usually not a tool of first choice.[9]

However, in protracted ethnopolitical conflicts in particular, the armed non-state actors (i.e. resistance or liberation movements) often do request international support at an early stage. They perceive the internationalisation of the conflict as a benefit to them because they hope to gain increased legitimacy for their movement and its causes for fighting. But as long as other stakeholders reject international mediation – as for instance, state actors facing rebels usually tend to do – this is also a relatively easy way to increase political and moral pressure. It might therefore take the armed movements by surprise, leaving them poorly prepared when mediation is actually accepted. Armed movements often lack the experience to deal with a third party effectively and to lend it a crucial role in peaceful conflict resolution.[10]

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[5] This was an important aspect of President Ahtisaari's/CMI's role in the Aceh peace negotiations of 2005. It also featured prominently in the Darfur talks of 2006 and the various rounds of the Middle East peace process, to name just a few.

[6] The negotiations between the different Lebanese factions in Doha, Qatar in May 2008 provide an excellent example for the integration of fourth parties, as the Qatari government was able to bring in its good relations with the USA and Saudi Arabia on the one hand and Syria and Iran on the other.

[7] Power mediation as such is by no means a blueprint for successful conflict resolution. The United States made use of its dominating power to strike a deal between the conflicting parties over Bosnia in 1995. In the case of the Darfur negotiations in Sudan in 2006, however, US power mediation has failed.

[8] The importance of the deep split within the Sinhala community concerning whether or not to negotiate with the LTTE was one factor contributing to the breakdown of talks after 2004.

[9] In some cases of protracted ethnopolitical conflict, such as in South Africa, the conflicting parties have consciously opted against the offers of international mediation.

[10] This was partly the case with GAM in Aceh, who had not anticipated the Indonesian government's readiness to accept CMI's mediation offer.

The question of the right timing for mediation is usually discussed under the notion of ripeness; i.e. when the conflicting parties sense that:

− they cannot win the war militarily and additional violence will become counterproductive

− popular and also international support for them is waning – often triggered by an increase in civilian casualties

− the war is incurring high economic costs

− sustained mobilisation of their force can no longer be guaranteed.

Also, armed movements might consider a short-term change of the status quo to be necessary if they perceive growing internal competition, or an increased infiltration of government agents and undercutting of support (Cronin 2008: 6).[11] The state might consider change to be necessary if it is confronted by a strong peace movement.

However, the internal dynamics of the conflict parties often play an equally important role: the acceptance of mediated negotiations can be seen as an initiative for mobilising one's own constituencies vis-à-vis competing political parties and factions. Furthermore the relative numerical, political and intellectual strengths of moderates and hardliners within the parties obviously do impact on the conflict parties' preparedness to explore mediated negotiations.[12]

Despite the overall caution about engaging with international third-party actors, there are usually many unofficial mediation activities, often below the radar of public (or party) attention, which might pave the way for negotiations. In some cases, insider mediators play the role of the third parties; i.e. trusted individuals (NGO leaders, traditional or religious authorities, former politicians, respected academics and social activists) who serve as intermediaries helping to exchange information and messages or testing the ground for (in)formal talks. These insider mediators are characterized by their in-depth knowledge of the conflict situation, cultural sensitivity and close relationships to the parties (and, in some cases, their normative authority). The quality of this usually unofficial mediation is crucial, as it may not only open the doors for formal mediation but also complement the negotiation processes (see Mason 2009).

3.3   Who is best suited to the conflict parties' interests?

Conflicting parties will not accept mediators who question their status or who will be presumed to take a partial stance against their interests.[13] It is difficult to answer the question of who fits best, as this relates not only to the functional interests for mediation and the perceived preparedness to respond to parties' interests, but also to the context (e.g., some third parties are not acceptable for historical reasons or

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[11] An example of the former is the Palestinian infighting of PLO and other groups during the rise of first intifada; of the latter, a growing interest in negotiations on the part of the Provisional Irish Republican Army. The waning global support for any rebellion groups after 9/11 and the danger of losing ground in conflict also triggered their interests in seeking international support.

[12] The start of the Sudan peace talks in Naivasha in 2002 can be explained by internal factors and external pressure from the US.

[13] In some cases, however, local actors cannot be ignored or excluded because they are too powerful, such as Russia in comparison to its Caucasian neighbours.

because regional powers refuse to work with them).[14] Also, it cannot be taken for granted that different conflicting parties will consider the same mediators best for serving their interests. For example, while state actors in asymmetric conflicts prefer low profile mediators in order to protect their formal legitimacy, in contrast non-state actors might possibly prefer rather high profile external mediators in order to upgrade their own status.[15] Furthermore, the expectations vis-à-vis mediating roles and functions may vary from time to time in the course of the mediation process.

In general, for conflict stakeholders the strength or weakness of mediators is not a matter of their institutional capacity but of their potential functional contribution (Griffith 2005: 6-8).

Conflicting parties gauge the acceptability of a particular mediator against the benefits and risks they expect from their involvement. Likewise, linkages to mediators, such as the heritage of the past, cultural affinity or political and religious affiliation, may positively or negatively affect decisions to accept offers or to call upon mediators (Greig and Regan 2008: 769, see also Ropers 2009).

The choice of mediators thus depends both on existing opportunities and concrete functional interests. Ideal-typical triangular constellations are more the exception than the rule: while one conflict party might favour a strong power mediation approach (and will therefore call upon an economically, politically and militarily powerful actor), the other party might prefer a softer, more transformative mediation approach (and will call upon smaller, less interest-driven actors or an INGO). Strong parties are often preferred by the conflict stakeholders when it comes to the implementation and monitoring of agreements (Dudouet 2008). In protracted, asymmetric conflicts the situation is even more complicated if armed movements, who in any event feel very strongly about equal treatment, are subject to terrorist proscription which poses additional challenges to communication and engagement.[16] To them, seeking mediation may not only be motivated by upgrading their status to one of parity in the negotiation process but also as a step towards achieving de-listing and finding new ground for international recognition and legitimacy. Therefore in the interests of fair mediation, a systemic approach is required. One of the key questions to deal with is that of a mutually conceded parity of status of all participants of the mediation process.

In sum, different actors may serve in facilitating or supporting roles: state and non-state actors, private and business actors, international organisations, external or insider mediators (Slim 2007: 2, Cousens 2008: 70, Griffith 2005: 15, Tripathi and Gündüz 2008). For the conflict parties, it is seen as a strength if they have a variety of offers from which to choose; and they might choose different actors for different functions. For third parties, it is therefore key to understand that they are working in a broader mediation system, albeit with different functions, but with a potentially high level of complementarity.

In terms of the qualities of a third-party mediator, the conflict parties refer to their:
– competence

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[14] For example, Nepal's powerful neighbour India was reluctant to let international mediators gain ground.

[15] Sri Lanka provides a good example for these diametrically opposed expectations vis-à-vis the mediator. While the LTTE had asked for UN mediation, the Sri Lankan government made it very clear that they would only accept a less heavyweight mediation power.

[16] This is currently one of the major stumbling blocks in the ceasefire negotiations between Israel and Hamas, as the latter is not accepted as a legitimate negotiation partner. Communication is thus only indirect, through the Egyptian mediators.

– personal commitment, respect and integrity

– empathy

– patience

– independence
– flexibility and tradecraft skills.[17]

Power, then, is not the main variable in choosing a mediator. On the contrary, hard power (i.e. the ability to use 'sticks' rather than 'carrots') might damage the mediator's reputation as s/he will be seen as pushing for a pre-determined outcome. Incentives and sanctions might play a pivotal role in some peace processes, but a smart collaboration between a power player and a mediator can also prove to be effective.[18]

This is by no means to say that wielding and projecting power is unimportant. But the power of the mediator is better translated in terms of authority and recognition by all conflicting parties.

It is important to recall that conflicting parties lend only temporary authority to third parties (Crocker 2007). They will prefer mediators who do not claim a permanent lead role, and will be keen on preserving the right to cancel mediation activities or to choose new mediators. Again, having a choice is not bad but an asset for the stakeholders, and it need not be a burden for the mediators either.

3.4 Where should mediation take place?

As a principle, mediation and negotiations should be conducted within the country in conflict, or nearby. When the party leaders leave the country for negotiations outside it, they leave a lot of uncertainty behind. Furthermore, agreements taken inside a country enhance national ownership, both in symbolic and practical ways.[19] Third parties can play an important role by assisting the conflicting parties to build local facilitation and negotiation capacities within broader processes of national dialogue.[20]

However, because mediation usually starts in moments of fierce and often on-going battles, safe venues for mediation are as important for the mediators as they are for the conflicting parties. Under the conditions of on-going fighting, a key task for the mediator will be establishing neutral zones or safe havens for communication that are free of physical risks and guarantee confidentiality to all participants.[21] In addition, many protracted conflicts are marked by a high level of symbolism around territory and space (and contested territorial demarcation lines). In order to meet on neutral ground,

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[17] Or negatively speaking, the 'seven deadly sins' of mediation are: ignorance, arrogance, partiality, impotence, haste, inflexibility and false promises (Brahimi and Ahmed 2008).

[18] The mediation system during the Sudan peace negotiations in Naivasha from 2002 to 2005 was quite smart in this respect, as it entailed a regional organisation, IGAD, as lead mediation agency, and a small group of friends (troika), encompassing the UK, Norway, and the USA.

[19] For example, take the Oslo Agreements between Israel and the PLO, which remained alien to large sections of the Israeli and Palestinian societies.

[20] This entails assisting peace secretariats or other peace support structures, as has happened in Nepal, for example, or is currently happening in Lebanon.

[21] If envoys are expected to move towards compromise, strict confidentiality is a must – in order to avoid causing infighting in the stakeholders' camps while discussing preliminary ideas.

the negotiations might have to take place outside the country, which might pose a challenge for representatives of proscribed armed groups.[22]

Informal facilitation or consultation approaches that aim at providing space for the exploration of new political options and ideas also benefit from meetings outside the country. These can help the participants to detach from usual routines and tasks, and also protect them from rigid public scrutiny.

What do conflicting parties expect from third-party mediation?

Initially, the conflicting parties will try to manipulate the mediator and expect him/her to make their opponent better understand the legitimacy of their interests and demands in order to trigger a change of the current attitudes and behaviour on the opponent's side. To them, mediation serves the purpose of transmitting their own political interests into the mindset of the opponent.

But once the mediation process begins to unfold and the mediator proves his/her competence and commitment, the parties will expect that the mediator is not weakening or undermining their own position (Jagan 2006: 72-74), but rather that s/he is taking responsibility for a process which is fair and responsive to the parties' needs. The mediator's persistent credibility in terms of ethics and values is similarly important: pretending to be pragmatic or a 'blank sheet' in response to human rights abuses is likely to erode the credibility on either side and lead to waning support in the wider intra-state and international constituencies (Baechler 2008: 11).

While the mediator's overall formal or informal mandate stems from the conflicting parties, it is quite common that they expect him/her to take responsibility for setting the agenda, sequencing discussions and organising the venue. In terms of the content of the negotiations, conflicting parties have emphasised the notion of ownership, showing that they would only accept external support on the basis that the conflict parties clearly remain in the driving seat (Dudouet 2008).[23]

In protracted asymmetric conflicts, the mediator might be expected to provide strong process-related leadership in order to deal with emotional blockades and strong feelings of insecurity among the parties. For this purpose it is crucial that the mediator is able to understand the concerns of all the key actors involved (multi-partiality). Furthermore, the mediator might be tasked with the coordination of other international actors and their potential support to the mediation, or with monitoring the implementation of an agreement or longer-term peacebuilding process.

In asymmetric conflicts, the mediator often is requested (and tempted) to provide capacity building for the weaker negotiation party (e.g. providing expertise for power sharing, DDR/SSR, etc.; training in negotiation techniques; organising study tours). However, mixing the roles of mediation, capacity building and monitoring is problematic for the third-party mediator as it impacts on the perceived impartiality/multipartiality, thus triggering suspicion and mistrust.

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[22] This happened to the LTTE when they were excluded from an international donor meeting in Washington in 2003.

[23] James Baker followed a different approach with respect to a solution of the Western Sahara conflict by drafting two plans (in 2001 and 2003) after a series of bilateral consultations with the Moroccan government and the Polisario; both parties refused the plans.

4. Recommendations for third-party mediators

Engaging all stakeholders constructively

1. Third-party mediators must have an *empathetic understanding* of the key interests and needs of all conflict stakeholders. A regularly updated mapping exercise may serve as a starting point to capture divergent interests and needs between and within the parties. Mediators should bear in mind that the partners they talk to are envoys with their own vested interests, while they themselves must consider and balance the interests of all stakeholders in the conflict. Beyond bilateral negotiations, mediation is a multi-level and complex process with many different interests and addressees.

2. Third-party mediators should strictly apply the *principle of multipartiality* as it helps to engage with all the parties without being seen by one or more of them as partisan, one-sided or lowly-committed. Multipartiality, which is not the same as being neutral, means understanding and identifying with a diverse range of opposing positions and standpoints, without seeming to favour one of these above the other. Of course, adopting a multipartial stance does not mean fraternising at all costs with parties' positions or interests for the sake of achieving recognition. Mediators must be aware that the interests of the rival actors will not be accommodated if neither side moves during the process. The integrity and credibility of mediators may therefore require admitting to failure in the mediation process before becoming stuck in endless (status) gambling between the conflicting parties.

3. Third-party mediators must pay constant attention to maintaining a certain *level of parity* between the competing sides, in order not to risk a sudden breakdown of mutual recognition. This also includes regularly monitoring how they are perceived by the conflicting parties, who might challenge the principle of multipartiality. One possible option would be to engage directly with the parties and raise this issue on a regular basis. Insider mediators on either side may also contribute a great deal to this enormously important prerequisite for a functioning mediation process.

4. Third-party mediators should guarantee, as far as possible, that the *ownership* of the negotiation process lies with the parties themselves. They must not forget that mediation cannot solve a conflict. Only the conflicting parties themselves can do that.

5. Upon request, third-party actors should help to *prepare the conflicting parties* for the negotiation processes (i.e. developing content- and process-related capacities) and prepare for challenges which different negotiation options entail. In asymmetric conflicts, the need for preparations might be very different for the respective parties. Promoting exchange of experiences and interaction with like-minded actors from other conflict areas who have faced similar challenges is particularly effective

since it might relieve perceived pressures of interventionist mediation. Dealing properly and creatively with the challenge of parity of status in asymmetric relations is essential. This should include drafting road maps that provide orientation to the parties about how to gain or to enhance mutual respect, trust, recognition and legitimacy.

6. If third parties are requested by one of the conflicting parties to provide *capacity building*, it is advisable to bring in professionals or otherwise recognised and experienced actors (i.e. experts or NGOs) to provide this technical support, as any further cooperation by the mediator with only one of the conflicting parties might trigger suspicion and fear of fraternisation for the other conflicting party (or their larger constituencies).

Improving mediation systems and mediation support

7. Third-party mediators should acknowledge and value the potential of complementarity and work towards a *culture of cooperation*. Conflicting parties who have decided to pursue negotiations might request or be in need of a broad range of different support activities. Protracted conflicts require equally protracted, flexible and adaptive mediation (support) systems. From the point of view of the conflicting parties, the most beneficial mediation system is one that offers them a choice of options for all their key interests (e.g. political, economic, security and cultural). Creating opportunities for choice may support the idea of offering specialized third-party actors.

8. Third parties must be clear about their *role* and the *division of labour* regarding how to share tasks with partners; e.g. monitoring of ceasefires, elections or human rights violations. For large organisations such as the UN or EU, lean teams of mandated mediators with a clear and specific assignment are recommended. Experiences of mediation have shown that too much biased baggage or the functional overstretch of a single mediator may hamper progress. Mediators therefore should accept and constructively apply the principle of a division of labour. Mediation also might become more efficient if specialised assistance can be provided. Mediators who claim to be the catch-all solution will most likely be confronted with suspicion. Different options for mediation (e.g. expert advisory missions, settlement mediation, wise counsel, community mediation, transformative or facilitative mediation, to mention just a few)[24] provide a good argument for the UN or Article 52 Organizations to establish or extend stand-by pools of mediation experts on call.

9. Third parties should foster learning and reflection as key contributions to improving mediation approaches and support systems. This entails systematic debriefings after the termination of mediation activities (probably in collaboration with other support actors), studies reflecting the perceptions and experiences of conflicting parties concerning the strengths and limits of mediation (client feedback) and frequent evaluations of the interplay between mediation mandates, means, actions and results.

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[24] See Alexander (2008) for a concise and systematic overview of mediation activities.

Strengthening the Roles/Capacities of Insider Mediators

10.   Since intra-state conflicts in particular are characterised by competing factions within conflicting parties (opting for controversial strategies), the need for committed skilled insider mediators who enjoy trust across the various factions is obvious. Their activities, however, should be linked to the third-party mediators, through focal point persons or by other mechanisms, such as regular information exchange and consultation.

11.   In order to strengthen the key contributions of insider mediators to any peace process, national capacities for mediation need to be acknowledged and strengthened. This entails training and establishing international exchange programmes for experienced and junior insider mediators.

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6. Abbrevations

CMI	**Crisis Management Initiative**
DDR	**Disarmament, demobilisation and reintegration**
EU	**European Union**
GAM	**Gerakan Aceh Merdeka (Free Aceh Movement)**
IGAD	**Intergovernmental Authority on Development**
INGO	**International non-governmental organisation**
LRA	**Lord's Resistance Army**
LTTE	**Liberation Tigers of Tamil Elam**
NGO	**Non-governmental organisation**
PLO	**Palestine Liberation Organisation**
SSR	**Security sector reform**