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**Negotiating Skills for Conflict Resolution
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This paper offers a practitioner's view of the negotiating skills necessary to manage and resolve conflict as they affect senior ministers and policy-makers. At its worst, conflict manifests itself in terms of armed force, insurgency and war. But the skills described below are equally applicable to 'softer' conflicts arising from economic disputes, social disparities or the normal cut and thrust of politics.

The first requirement of any negotiation is to be clear about the substance of the conflict. This sounds obvious, but too often one or all of the parties to a dispute is not clear what the dispute is really about. This involves knowing not only the substance of your own position, but that of the other side as well. Put in its simplest terms, any negotiator needs to be clear about his or her ideal outcome (the 'top line'), the point below which negotiation becomes pointless (the 'bottom line') and the mix of acceptable outcomes in between. All these may change as the negotiation proceeds, and it is clearly not possible to make the judgments necessary to secure a good outcome without knowing how the other side views the substance.

Hundreds of books have been written about negotiation and there are many conceptual frameworks within which negotiators can choose to operate. One of the earliest was developed by the Harvard Negotiating Program in the 1980's. A variant of that framework¹, published in the 1990's, suggests that a good outcome to a negotiation is either no agreement or an agreement that:

- Is better than your Best Alternative to a Negotiated Agreement (BATNA).
- Satisfies your interests well, the other side's acceptably and others' tolerably enough to be durable.
- Is an elegant no-waste solution among the best of many options.
- Is legitimate for all; no one should feel taken in.
- Includes commitments that are well planned, realistic and operational.
- Involves an efficient process with effective communication that builds the kind of relationship you want with other stakeholders.

It is worth keeping these criteria in mind as background to the rest of this paper. The last of them highlights a second, and most important, point about conflict resolution and negotiation. It is simply that both are about human beings. Without knowing them, their background, desires, feelings and motivations – not to mention, on occasion, their temper – success is much more difficult. At the UN Security Council in New York, fifteen Permanent Representatives are charged with representing the interests of their governments. They and their Deputies spend an enormous amount of time together and get to know each other well. This helps enormously in managing the delicate business of negotiation and often, as you will know, the big players do not get things all their own way. Representatives of smaller or less powerful countries who are able to judge the negotiating dynamic correctly can

¹ © 1991 by Conflict Management Inc, 20 University Road, Cambridge MA 02138, USA.

often make key contributions. Good personal relationships also help to generate a shared commitment towards the negotiation process and a successful outcome.

Today's conflicts are increasingly complex, both in terms of substance and in the variety of stakeholders they involve – including, in particular, non-state actors. In insurgencies like Sierra Leone and Afghanistan, it will become necessary at some stage to reach out to members of the insurgency who are prepared to embrace a constitutional settlement. Civil society organizations can often play a very significant role in helping to resolve social and economic conflicts, not least by helping develop capacity in such areas. And business interests, including those of multinational corporations, are often vital in resolving commercial and economic conflicts.

This means developing a capacity to reach out to a broad range of potential stakeholders. Often state institutions and actors can find it difficult to engage in parallel dialogues with state and non-state actors and bring the results together in a way that effectively balances personal relations and substance. Sometimes information-gathering and other networks either do not exist or are used in the wrong way. And on other occasions it may not be easy to find the right constituencies. A topical example may be the Western Region of Ghana, where oil has been discovered. When I was growing up near Cape Coast fifty years ago, it was probably among the least developed parts of the country. To be sure of dealing effectively with the tensions new wealth can bring, it is essential to have a close knowledge of local behavioral dynamics and needs. This can be particularly difficult to acquire at a time of potential external or regional instability². In any event, without the creation of good personal links and information flows there is a danger of misunderstanding and lack of engagement at the tipping points of crisis, whatever those may be.

A third important point is to be aware of the broader context. Poverty, social unrest, economic deprivation, organized crime and corruption have long been acknowledged as both causes and consequences of state failure and ultimately conflict. The effects of domestic instability and lawlessness can reach much further than the state concerned – the events of September 11 2001 are perhaps the most glaring example of that phenomenon. Without careful handling, new resource flows such as oil – while of course welcome in themselves – can become potential destabilizing factors. Corrupt and criminal activities in parts of the developing world can seriously affect the security and well being of those outside it. In October 2007, the UK Serious Organised Crime Agency seized fake cheques, postal orders and bank drafts from Nigeria worth more than £8m destined for the UK market. Thirty-two months later the Agency announced that online scammers from West Africa were defrauding Britons of thousands of millions of pounds³. Nigerian links to the airline bomb plot on Christmas Day 2009 also highlighted the fragility of parts of West Africa, and the importance of focusing on state building and security in the region.

Events in Sierra Leone and Liberia demonstrate well the continuum between state failure, conflict and post-conflict reconstruction. For the policy-maker, the first objective has to be to stop state failure in its tracks. But the bleakest scenario is for a

² For example, the BBC reported in 2010 that there were about 4000 refugees from the Niger Delta in the Western Province.

³ See e.g. <http://www.spamfighter.com/News-14537-SOCA-Online-Fraudsters-Defraud-Britons-off-Millions-of-Pounds.htm>

successful progression through conflict to metamorphose into the vicious circle depicted in figure 1 below. One fundamental cause of this is the absence of effective state institutions in which ordinary people can have confidence. This state-building dimension is fundamental to a sustainable approach to conflict management, in whatever area that conflict may manifest itself.

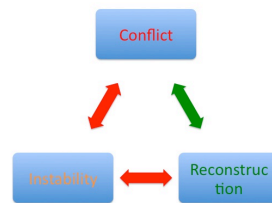


Fig 1: The Conflict Cycle

Taking a strategic approach is very likely to be the best way to achieve success. The first aspect of this is designing a strategic outcome and negotiating plan. Once conflict – whether physical or economic - has broken out, perspectives can sometimes narrow. Negotiating efforts can become geared to accommodating the requirements of the main parties, rather than setting out roadmaps towards a durable outcome. Private greed can easily become a factor in the minds of key protagonists, and can inhibit negotiated settlements⁴. There is a strong case for taking a careful look at the dispute resolution process to point negotiators towards a better long-term outcome. A detailed inventory of the elements necessary for a successful outcome can be a helpful negotiating tool; it would be prudent in this context to pay special attention to the powers and structure of any bodies or institutions necessary to support it. In a minerals context, these might, for example, include provision for effective regulation of the industry and the provision of services to the local population. More generally, and in the context of state failure, some authors⁵ have suggested drawing up an index of state functions as a way of shaping both the desired end-state of the negotiations and the measures necessary to reach it.

Adopting a whole-of-government approach can be very helpful in deciding what constitutes a good strategic outcome. A pooling of information may be essential to ensure an accurate picture of the problem and its potential outcomes. Often the interests of a number of government departments will be at stake, and there will be cross-linkages between them. Internal perspectives may vary and there may be tensions, for example over financial concessions offered to attract an outside investor and any loss of revenue resulting from them. As well as classic instruments of state power, there may be many potential negotiating levers that do not become apparent without broad internal horizon scanning. These could include economic, fiscal, social and employment measures, and investment incentives. It is also prudent to include discussion of sanctions and potential disincentives as part of a negotiating strategy.

A good system of internal co-ordination is usually necessary to underpin these discussions. It should be sufficiently broad to include all those with a real interest in

⁴ 'Human Security and the New Diplomacy', Ed Rob McRae & Don Hubert, McGill-Queens University Press 2001.

⁵ 'Fixing Failed States', Ashraf Ghani & Clare Lockhart, OUP 2008.

the matter at hand without being too cumbersome or unwieldy. It should be responsive enough to take decisions quickly and to take account of the political and resource dimensions of a conflict. And it should be transparent enough to allow the interests of outside stakeholders such as Parliament and civil society to be properly taken into account.

These criteria are not easily met, and it is not for outsiders to dictate what they should be. However, there is much to be said for underpinning the arrangements with an independent secretariat that is not beholden to any particular part of government, but linked with, and responsive to, its Head who ultimately will have to rule on any points of disagreement. It is for discussion whether those responsible for co-ordination should have executive responsibility for the conduct of negotiations; both options can work. In the United Kingdom, for example, the Cabinet Office Secretariat – answerable ultimately to the Prime Minister, but available to all Departments as a common asset – undertakes co-ordination of European Union business through a system of Ministerially-chaired committees, but does not implement policy itself. In the US, the National Security Council can undertake a similar role in respect of defence and foreign policy but can sometimes assume more executive responsibilities.

A final element of planning should involve the most effective method of settling the dispute. Sometimes circumstances will dictate this, but on other occasions there may be a choice. If negotiation is likely, should it best be conducted bilaterally or under the auspices of an external organization in which those sympathetic to your position might provide assistance? Should there be direct face-to-face talks, or should negotiations be conducted through an intermediary? There are no hard and fast answers to these questions. Whatever format is adopted will self-evidently need to command the confidence of all sides to the dispute, but head-to-head negotiations may not always yield the most productive outcome, in either the initial or final stages. If time allows, there is often a lot to be said for exploratory contacts before any formal negotiations begin. And as a general rule the Principals on both sides should not get involved before they need to; initially the running is often best left to their collaborators.

However, negotiation – though often tried first – may not always be the most effective way of settling a dispute. Another option, including where legal and commercial issues are at stake, may be mediation. Under this scenario, a mediator appointed by and with the confidence of both sides assists them to resolve their differences. He or she controls the process and facilitates discussion but takes no view on the substance, which the parties must ultimately resolve themselves. Mediation is confidential and without prejudice so that if the process fails nothing discussed during it can be used subsequently. It can offer a very cheap alternative to litigation and provide an effective way of resolving disputes at local or national level. A mediator can also help bridge any cultural gaps between governmental and non-governmental stakeholders. The use of mediation is increasing in a number of African countries, including Kenya where it is seen as an effective way of ensuring transparent implementation of the provisions of the new Constitution.

Arbitration is another potential avenue of dispute resolution. It can be binding or non-binding and conducted by a trusted individual, an organization or a court.