A Codebook for Evaluating Peace Agreements

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PREFACE

Sooner or later, all conflicts – even the ones highest in intensity and violence – end. Sometimes this happens because of the victory of one of the parties, and the defeat of the others. Many times, conflicts end after negotiations between the opposing parties, resulting in a peace agreement. Yet the mere conclusion of a peace agreement does not mean that peace will follow. Too often, peace agreements fail, whether because of a lack of good will of the parties, the bad implementation of the agreement, the negligence of the root causes of conflict, or due to other reasons. The intention of this cahier is to explain the successes or failures of peace negotiations in such a way that in future negotiations such an outcome can, to some extent, be predicted. For this, a list of evaluation criteria regarding the difficulty of the conflict, the negotiation process, the peace agreement itself and the implementation phase will be proposed.

In the first, more theoretical, part of the cahier, these criteria are introduced and evaluation tools are presented. More specifically, four evaluation instruments are proposed. The first one will provide us with an estimation of the degree of difficulty with which the conflict transformation can take place. Some conflict characteristics will aid a peaceful resolution, whereas others can be detrimental. A second instrument focuses on the negotiation process that preceded the agreement. Quite often the procedure by which an agreement is reached is as important as the agreement itself. The agreement itself will be assessed by a third instrument, and lastly an evaluation tool for the implementation phase is advanced. This theoretical presentation then will be applied to two case studies.

The first case focuses on the Dayton Peace Agreement (DPA) of 1995 that ended a 4-year long war in Bosnia and Herzegovina (BiH). While fighting has not resumed and – for the moment – chances for such a resumption of the violence are estimated to be quite low, nationalism remains high and ethnic tensions might resurface quickly. This could endanger the progress towards a sustainable peace as some challenges will have to be dealt with shortly. If Kosovo declares its independence unilaterally and is recognized by the international community, the stability of the Bosnian state structure might be challenged since Serbian protests are likely. Furthermore, a revision of the constitution of BiH, which was agreed upon in the DPA, imposes itself as factor. Nevertheless, the visions of Muslims, Croats and Serbs on what this revision should entail are miles apart. All in all, the DPA can be considered to be a partial success. The reasons for this will be explained by the use of the evaluation instruments proposed in the theoretical part. In this chapter we also attempt to map the conflict (another useful tool for conflict analysis) before proceeding to assess the difficulty of the conflict and evaluate the peace agreement.

The second case is the Oslo Agreements of 1993 that were believed to be a milestone in the Middle East peace process. Originally intended as a back channel to bring the Madrid negotiations back on track, the secret talks would produce several agreements that contained the promise of gradually pacifying the Middle East. These high expectations were not fulfilled, and the reasons for this are identified by the evaluation tool proposed in this cahier.

Nonetheless, the use of such evaluation methods requires a lot of caution. The two case studies used in this cahier constitute mere examples of what the method is capable of producing. In order for such an endeavour to be accurate and come up with clear and undisputed results, further research (and especially on the field) is required. At no point do we suggest that such a codebook could be filled in by one or two people using only the available bibliography on the topic/conflict at hand. The case studies in this cahier are as brief as possible and are only based on a selection of the current bibliography, which is under no circumstances complete in case an evaluation is planned. The purpose of this cahier is not to analyze the given cases but to try out the method. Hence, we ask the reader to focus more on the substance of the cahier rather than the cases themselves. This cahier should be used as an introduction to a methodology evaluating peace negotiations. All comments and suggestions for improvements are welcome.

I. DEVELOPING THE CODEBOOK

Introduction

In many conflict-ridden countries, a negotiated peace agreement forms the foundation of a sustainable peace building process. Yet, not all peace agreements provide the potential of reaching a lasting and self-sustaining peace. Some negotiations will lead to a mere cease-fire, some have high ambitions but lack the necessary conditions for durable conflict-solving and sustainable peace, and others will simply fail to even end the fighting. Therefore, the evaluation of peace agreements is an essential element of peace research. A good evaluation method might explain the failure or success of peace agreements and can provide a useful insight to practitioners trying to negotiate the end of war. Unfortunately, the evaluation methods used are about as diverse as the conflicts dealt with and no single framework exists on which authors can agree. In this article, a number of evaluation criteria will be proposed, from which a valid questionnaire can be extracted to evaluate peace agreements. For this, a Process-Content-Implementation Analysis shall be used. In the following paragraphs, the criteria by which to evaluate the negotiation process leading up to a peace agreement, the content of the peace agreement and the implementation of the negotiated agreement will be discussed. But first the degree of difficulty of the conflict transformation process will be assessed.

A. Assessment of the difficulty of the conflict[1]

When looking at the success or failure of peace negotiations, we notice that the outcome does not depend solely on the negotiation process, the content of the negotiations and the implementation efforts, but also on the characteristics inherent to the conflict. More precisely, the degree of difficulty of the conflict will largely determine the scope of possibilities within which the outcome will have to be created. The conflict difficulty is related to several factors. First, there are the parties involved. Downs and Stedman point out that a proliferation of parties is likely to make a conflict more difficult to resolve.[2] Second, the issues that are at stake can make it more or less difficult to solve a conflict. Some issues will be believed to be worth fighting for, others will be considered as something on which a compromising or accommodating attitude is acceptable and/or preferable. Third, the approach that the parties take towards the conflict will influence the outcome. Fourth, the internal opportunity structure can cause an inclination towards or against peaceful conflict resolution. Fifth, the history of the conflict and the parties involved are likely to

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[1] Based on Reychler (2001), p.8
[2] Downs and Stedman (2002), pp. 55-56

reverberate into the present time. Sixth, the internal commitment to peace will be a crucial element in the (un)likeliness of conflict escalation. Finally, a high level of external commitment and support for a peaceful settlement can direct parties towards peaceful conflict resolution where they themselves would have been inclined to veer off the track towards sustainable peace and resort to violence. These determinants will be looked upon more closely in the following paragraphs.

1. Factors influencing the difficulty of conflict

The parties

Number of the parties

Stedman believes that if there are more than two parties opposing each other in a conflict, then the difficulty of the conflict increases with the number of parties involved.[3] This is a consequence of the existing problems in keeping all important stakeholders on board of and satisfied with the peace process. The more parties there are, the more complex it is to find a way to satisfy them all. As the number of different and opposing opinions increases, it is more difficult to find a settlement that integrates them all.

Extremism of the parties

Not only the number of parties, but also their level of extremism and intransigence plays an important role.[4] If there are many, but mostly moderate parties facing each other, they might be more successful in reaching an agreement acceptable to all of them, then if there are few, but highly radical parties unwilling to compromise.

Issues at stake

This factor includes the strategic importance of the issues for the parties (vital interests or not), the nature of the issues (identity-related issues or resource-related issues)[5], the presence of common or competing issues and goals[6], and the level in which the leadership of the parties exploits the issues to further its own interests[7]. If one or more parties consider the issues in a conflict vital, this is likely to increase the will to fight. The costs of 'losing' or 'accommodating' are then deemed unbearable as it may be threatening the survival or the quality of life of one or more of the contending groups. Further, the nature of the conflict will affect the ease with which it can be resolved. Downs and Stedman

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[3] *ibid*
[4] Abdallah (2001), pp. 159-161
[5] Rothman (1997), pp. 5-32
[6] Lewicki, Barry, Saunders and Minton (2003), pp. 53-54
[7] Reychler (2001), p.6

claim that wars of secession are more difficult to resolve.[8] Rothman indicates the difficulty of identity conflicts that do not allow for the same compromising or accommodating approach as some resource-conflicts do.[9] What is at stake here is someone's identity, safety, recognition, etc. The presence of common or competing issues also influences the difficulty of the conflict. If common issues are at stake, then both parties can achieve – at least partly – what they want at the same time. If competing issues are involved, then the goals of the parties are mutually exclusive.[10] One party wins, the other one loses. Negotiation tactics to circumvent such radical win-lose situations exist and include, for example, expanding the pie and logrolling techniques amongst others. Finally, it matters whether the issues that are presented are the genuine concerns of a party in the conflict, or a mere cover for, means to, or side-effect of the leadership's personal goals that do not necessarily correspond with the publicly stated and supported aims. In the latter case, even a fairly good solution for the conflict might be rejected because it prevents the leadership from reaping the spoils of the conflict.[11]

Approach of the parties towards the conflict[12]

Also determining the conflict difficulty is the approach utilized by the distinct parties. Is there a critical amount of peace building leadership present, or are radical elements in charge of the parties? Are leaders willing to compromise and to accommodate, or do they believe that their goals can be achieved by violence? This will affect the will to fight and the commitment to peace the contending parties will display. If parties believe that violence increases their chances of success, they will be more likely to escalate the conflict when the negotiations or the peace process seem to be blocked, or at least to not actively prevent such a conflict escalation. If, on the other hand, they believe that the outbreak of violence would be detrimental to their interests, more efforts will be made to control the conflict and to keep it limited in nature and consequences.

Internal opportunity structure

The internal opportunity structure refers to the structural political, economic, social or other conditions which are present within a country and which aid or impede peaceful conflict resolution. Here we can identify the presence of a democratic system, the rule of law and order, the orientation of the main media, etc. In a democracy, where leadership is accountable to the people on the basis

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[8] Downs and Stedman (2002), pp. 57
[9] Rothman (1997), pp. 5-32
[10] Lewicki, Barry, Saunders and Minton (2003), pp. 53-54
[11] Stedman (2000)
[12] Reychler (2001), pp. 6-7

of a regular popular vote, political leaders are more likely to consider the popular opinion in determining the way to handle a certain conflict.[13] If the people are showing a very negative attitude towards violent solutions, then it is less likely that democratically elected leaders will opt for the violent path and it is more likely that they will search for a peaceful resolution. Nevertheless, popular opinion is not a guarantee for the actions of the political leaders, as was proven by the war in Iraq, where the UK, Spain, and other countries all participated despite the will of the majority of their respective constituencies.[14] In addition, in a democracy the aggrieved parties can try to obtain their goals by mobilizing the elected politicians that are accountable to them. If a country has an authoritarian regime, then those leaders have less inclination to make their actions correspondent to the will of the population. Of course, the belief that democratic leaders are more likely to listen to the wishes of the people than authoritarian leaders, only indicates that if the voters are in favour of a peaceful resolution, democratic regimes are more likely to pursue their goals peacefully than undemocratic regimes. It does not guarantee that the population will be in favour of such a peaceful solution. It is not unthinkable that occasionally the voters will be more radical than their elected leaders. If this is the case, then the extremism of the electorate may convince previously moderate leaders to take a less accommodating approach towards a conflict. If not, their concessions may be considered as 'weakness' and the punishment will follow in the next elections.[15] This is especially the case in ethnic conflicts when politicians are elected on the basis of their ethnicity and thus held accountable only by their own ethnic group.

Therefore, the role of the media on public opinion cannot be underestimated. If the media are oriented towards war, covering the facts in a sensationalist manner and playing on the emotions of fear and anger, the viewers – and voters – are more likely to support a government's hard reaction towards a conflict. If the media are objective in their reporting, take the time to analyze the causes of the conflict and present possible – peaceful – solutions to their viewers, public opinion is more likely to demand that a peaceful alternative is pursued to solve the conflict. Gardner[16] distinguishes between *hate* media and *peace* media to indicate those different media approaches. Similarly, Galtung[17] speaks of war and peace journalism.

Furthermore, the rule of law can be an important element in preventing a conflict to escalate or to contain its impact. If the law treats those subjected to it in a fair and equal manner, and those in defiance of the law are likely to be

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[13] Sisk (2003)
[14] Kritzinger (2003)
[15] Hoddie and Hartzell (2003)
[16] Gardner (2001), pp. 304-308
[17] See f.i. Galtung (1998)

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apprehended, brought to trial and effectively sanctioned, then a conflict is less likely to escalate. This is because of (1) the deterring effect that comes with an effectively sanctioned law, and (2) the punishment and likely removal from society (through a prison sentence) of those individuals that were not sufficiently deterred and who at some point, while the conflict was escalating - either through inciting violent actions or through perpetrating them - were committing a criminal act that will be sanctioned as prescribed by the law. Call and Stanley also mention that the legitimacy of the police is dependent on their representation of a fair judicial system and warn that if suspects are released due to judicial errors or corruption, it is likely that frustrated police forces may turn to a form of vigilantism.[18]

History of the conflict and of the parties

The degree of conflict difficulty is further related to the legacy and the past of the conflict. If the conflict has already lasted for a long time and if the level of destruction, the number of refugees and the number of war-related deaths is high, then the conflict difficulty increases. The trauma and the psychological impact of such a conflict tends to be more palpable and, as such, it takes more time for the victims to deal with the memories and to forgive. This is even more so when the impact of the conflict is unequally spread.[19] In that case, one party may be perceived as 'good', 'innocent' or 'victim', while the other will be considered 'bad', 'perpetrator' or 'criminal'. It is then likely that the victimized party will want revenge or claim special rights as a compensation and as a future guarantee. While such demands may be understandable and even justified, they risk creating new inequalities and imbalances in the relationship with the other party, leading to new frustrations. This is what happened in post-genocidal Rwanda.[20] Furthermore, a low level of war-weariness, and a history of failed peace negotiations may make a conflict more difficult to solve.[21]

Internal commitment to peace

The internal commitment to peace is determined by the presence or absence of a critical amount of peace building leadership, by the willingness to compromise, and by the genuine desire for peace that is related to it. A conflict may be highly complex and the issues at stake very important, yet if all parties have a high internal commitment to peace, a crisis can be contained and solved through negotiations. If, however, parties believe that violence can further their goals more than peace, and are less committed to the creation or preservation of

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[18] Call and Stanley (2002), p. 321
[19] Kurtenbach (2001)
[20] Scharen (2007)
[21] Reychler (2001), p.8

peaceful relations even in the difficult times, then the chances for (continued) violence and war increase. This is also related to the ripeness of a conflict and to the presence of a mutually hurting stalemate. When the parties' leadership is confronted with a situation where it seems it cannot achieve military victory, its willingness to negotiate and to compromise increases.[22] The presence of a leadership willing to bare the political and other costs that come from negotiating with 'the enemy' is necessary for negotiations to succeed. Radicals at home may portray any concession as a sell-out and this may endanger the leaders' position at home. The leaders should be willing to take that risk.

External commitment and support

Finally, the neighbourhood in which the conflict takes place and the willingness of the international community to support peace – not just passively, but actively where necessary – will influence the degree of difficulty of a conflict. If a conflict takes place in a bad neighbourhood, escalation and intractability is more likely than it is in a good neighbourhood and the degree of difficulty increases. With a bad neighbourhood, we understand a geographic region of great instability, with neighbouring countries behaving as spoilers to the peace process and actively or passively supporting extremist groups within the affected country. It is also characterised by porous borders allowing for smugglers and criminal groups – gaining from the country's instability – to freely move through the terrain and further destabilize a fragile situation. Stedman argues that 'civil wars rarely take place in otherwise stable regions.'[23]

The support of the international community will be even more crucial in the case of a 'bad neighbourhood'. The international military presence that started monitoring the borders of FYR Macedonia with Kosovo, helped to prevent the influx of weapons and combatants that was increasingly destabilizing FYR Macedonia and brought it to the edge of an ethnic war.[24] But even in cases where the neighbourhood is 'good', international support is sometimes necessary and often helpful to guide conflicting parties on the road to peace and to help them to stay on that peaceful track.[25] This may be because the parties do not have the necessary peace building capacity themselves, or because the existing high levels of mistrust can only be tempered by the knowledge that a third actor is monitoring and/or sanctioning the situation. Likewise, the external support can take many forms: from offering 'good offices' to aid negotiations up to economic, financial, humanitarian and military support. Stedman here recognizes three indicators of interest and commitment: major or regional

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[22] Walter (1997)
[23] Downs and Stedman (2002), p. 57
[24] International Crisis Group (2001), pp. 1-5
[25] Walter (1997)

power interest, commitment of resources and acceptance of risk of casualties to soldiers.[26]

2. Mapping the difficulty of conflict

When mapping the degree of difficulty of the conflict transformation process, the positive and negatives poles of the influencing factors described above can be seen as ideal types. The continuum between the poles is then divided into categories that represent the score of a conflict on a certain criterion. Here, we opted for a scale of five categories, to which colours can be assigned in order to make the overview of the scores more clear. It allows us to see rapidly which factors are problematic. If a conflict score falls in the first category on the left, then (almost) none of the elements that increase the difficulty of conflict transformation are present for that factor. If it falls in the last category on the absolute right then (almost) all of the troubling elements are present and the conflict becomes significantly more difficult due to that. A score in the second category indicates that a few problematic elements are having a relatively small negative impact on the conflict difficulty. A score in the fourth category indicates that for that factor, many elements are having a strong negative impact. The category in the middle gathers the cases where some elements exist that have a limited negative impact on the conflict difficulty.[27]

There are few conflicting parties.					There are many conflicting parties.
The leadership is moderate					The leadership is extremist
The conflict is about resources (land, energy, water)					The conflict is deep-rooted (identity conflict)
The conflict is embedded in a peace-enhancing environment					The conflict is embedded in an undemocratic environment, where conflict-regulating mechanisms are absent and rule of law is not upheld
The media have a positive influence on the conflict					The media have a negative influence on the conflict
The conflict is of short-duration and with relatively few victims.					The conflict is of long-durations with many victims.

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[26] Downs and Stedman (2002), pp. 57-58
[27] The same method is used for the tables that follow.

The conflict is very symmetric						The conflict is very asymmetric
Internal commitment to peace is high						Internal commitment to peace is low
External commitment to and support for peace is high						External commitment to and support for peace is low
The conflict takes place in a good neighbourhood						The conflict takes place in a bad neighbourhood

Table 1: Evaluating the difficulty of conflict transformation

B. Assessing the chances of successful peace agreements

1. Analysis of the Peace negotiation process

The process by which peace negotiations are conducted highly influences not only the terms of the agreement reached, but also the satisfaction of the parties involved and the chances for a successful implementation. In this article, we discern several process-related criteria that might have a noticeable impact on the outcome of the negotiations. These can be related to the characteristics of the parties, to the power relations that exist between them, or to the nature of their interactions. Further, the role of third parties heavily influences the chances for success and failure.[28] However, the impact that each of these criteria has on the outcome may diverge and is intertwined with other influential factors and circumstances.

The inclusiveness of the process

The inclusiveness of the peace process is understood as the degree of participation by the major stakeholders, which includes (1) the major warring parties regardless of their radicalism and intransigence, and (2) the civil society that eventually has to live with the resulting peace agreement. Ideally, a negotiating process should include all important stakeholders otherwise excluded parties might reject the agreement and behave as spoilers in the implementation phase. The strength and the credibility of an agreement is dependent on the relevance of its signatory parties. Of many failed peace agreements it is said that one of the main causes of their failure lies in the exclusion of stakeholders during the negotiations. Examples are the failure of the 2006 Darfur Peace Agreement,[29] which was not signed by two main rebel

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[28] Reychler (2003), pp. 49-51; Reychler and Langer (2006)
[29] Maru (2007)

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groups and did not include any representatives of the civil society, or the 1994 Lusaka Protocol[30] which attempted to end the civil war in Angola.

On the other hand, the successful resolution of some seemingly unsolvable conflicts has occasionally been attributed to the use of a more inclusive approach during the negotiations. R.G. Khouri[31] argues this was the case in the Northern Ireland conflict. Downs and Stedman[32] further point to the difficulties encountered by peace operations when the major warring parties do not voluntarily – or at least under a minimum level of pressure – sign a peace agreement beforehand. They believe that the absence of such an agreement indicates a lack of problem-solving and of trust- and confidence-building abilities among the major warring parties, and warn that any third party intervention at this point might be fiercely opposed.

However, sometimes the choice might be between a rather exclusionist agreement and no agreement at all. Political leaders might be willing to sacrifice civilian lives and to create humanitarian disaster, believing that by continuing the fighting they can either reach a goal deemed worthy or serve an undisclosed personal interest. To include such persons in the negotiation process might seriously decrease the odds of reaching any negotiated agreement at all and might simply serve to legitimize the extremist parties that are obstructing the peace process.[33]

Therefore, although an inclusive approach is preferable, there are times when the inclusion of extremist parties might impede rather than aid the peace process. For an inclusive peace process to be successful, the goals and the strategies of the parties involved must be compatible with inclusive agreements and be endowed with a certain level of flexibility. The introduction of highly intransigent parties with exclusive goals and strategies in the peace process, might lead either to a highly unwelcome and non-implementable outcome or to no outcome at all.

The level of negotiator authority

The authority with which the negotiators are endowed has a great influence on the process and the outcome of the negotiations. When dealing with limited negotiator authority, a first question is whether the limitations are due to exogenous reasons, or due to the voluntary restraint of the authority as part of the negotiation strategy. In many democracies, a treaty will have to be ratified

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[30] Notes from comments of Hare, Paul J, and Stuenber, William A. made at the event hosted by the Woodrow Wilson International Centre for Scholars and co-sponsored by the Conflict Prevention and Resolution Forum entitled: *Inclusion in Peace Processes: Who Should Have a Seat at the Table? J*une 8, 2004
[31] Khouri (2005)
[32] Downs and Stedman (2002), pp. 54-61
[33] Abdallah (2001), p.159

by the Parliament. When negotiating peace agreements, there might be certain advantages as well as disadvantages to a limited negotiator authority. As peace talks often take place away from the constituencies, it might prevent negotiators to agree on internally unacceptable terms and conditions.[34] To do so, would likely have devastating results in the implementation stage. A negotiator with unquestioned authority might have much more flexibility in the negotiating process, but can be pushed to concede more than he wanted to. This entails grave risks for the effective implementation of the agreement, as parties unhappy with the negotiated outcome may stall or evade during the implementation phase.

On the other hand, negotiators that do not have sufficient authority to conclude binding agreements on behalf of their constituencies can be an impediment to successful negotiations. Other parties may refuse to deal with someone lacking the credibility that he can deliver what he promised.[35] Or, parties may effectively use the strategy at a later stage as a 'way out'. A signature of someone actually lacking the authority to conclude an agreement enables a party to renege on the concessions made, on the grounds that it never gave its consent anyway. This is what happened with the 1994 Lusaka Protocol, which was signed on behalf of UNITA but not by its leader Jonas Savimbi, who later became a spoiler to the implementation process.[36]

In general, an elaborate negotiator authority is believed to aid the negotiation process, given that the negotiators are not subject to groupthink and that the constituency is sufficiently informed of and/or included in the negotiations.

(A)symmetry of the power relations

There can be an aspect of symmetry or asymmetry in distinct forms and different stages of the negotiations. Here we identify four different types of (a)symmetry: (1) at the level of structural relationships[37] between the parties; (2) in the choice for negotiation instruments and strategies; (3) as a result of third party intervention; and (4) in the outcome of the negotiation process.[38] Asymmetry at the structural level means that an imbalance exists in the demographic, economic, political, socio-cultural and/or military level in which one party has clearly the upper hand on the other party. This imbalance can translate itself into the choice of negotiation instruments and strategies. The

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[34] Lewicki, Barry, Saunders and Minton (2003), pp. 53-54
[35] *ibid*
[36] Knudsen, Mundt, and Zartman (2000)
[37] When speaking about violent conflicts, this is related to the effects of a perceived mutual stalemate. If parties are considered to be equally powerful on the battlefield, the willingness to negotiate tends to increase. The reason for this is that parties feel that they cannot gain military victory on their opponent.
[38] Pfetsch and Landau (2000)

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stronger party then is more likely to use a 'take-it-or leave-it' or a 'take-it-or-suffer' approach, while a weaker party is more likely to employ strategies such as 'borrowing-of-power'. Asymmetry can further be caused, furthered or tempered by an (un)equal external support. A party with weak military power that is heavily supported by a Great Power nation might have more levers at its disposal then a country of average military strength. Finally, the outcome of the negotiation process can either be symmetric or asymmetric, influenced but not determined by the four levels of (a)symmetry discussed above.

Although some authors believe that the respective power of the parties will be levelled in the negotiations, and therefore that fair and equal outcomes will be produced regardless of the power structure, the more dominant thought is that power *does* matter. Of those holding the latter vision, most see power symmetry as producing faster and better outcomes than what would result from asymmetric power relations. This seems to be supported by laboratory-experiments in social psychology. Pfetsch and Landau[39] argue that a perception of power symmetry in the negotiation process and its outcome tends to lead to a greater satisfaction of the parties with the agreement. Parties will be more likely to accept the agreement freely, which increases the prospect of a stable and durable peace. If the parties feel that there was a highly asymmetric negotiation process or that they gained significantly less than the other party from the agreement, then they will feel rather unsatisfied with the outcome. As a result, they often show less willingness to implement the negotiated agreement and are more likely to renege on their commitments at a later stage.

However, in contrast, Rubin and Zartman find that 'symmetry in conflict situations tends to produce and reinforce hostility and prolong negotiations.'[40] Symmetry, so they claim, is likely to deadlock states as preserving and defending status becomes more important than the content of the negotiations itself. Asymmetric power relations on the other hand, can produce more efficient and better outcomes. They indicate that weak parties use tactics to counterbalance the exploitative strategies deployed by the more powerful. As a consequence, they do not suffer much from the asymmetric characteristics of the negotiations. Given the deviant status of their work, their views are considered important but we tend not to follow them in this article.

Constructive or inimical relations and the cost-effectiveness of the process

J. Rothman[41] perceives antagonistic relations among conflicting parties as an impediment towards the genuine problem-solving that is required in identity conflicts. He distinguishes between identity conflicts and resource conflicts

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[39] *ibid*
[40] Rubin and Zartman (1995)
[41] Rothman (1997), pp. 5-32

insofar that the latter allow for compromises, while the former do not. This is because of the fact that compromising on one's needs for safety, dignity, recognition, purpose, etc. will likely lead to highly unstable and often resented agreements. Therefore, so he argues, transforming those antagonistic relationships into a more reflexive attitude will be the crucial first step for the resolution of such identity-conflicts. Antagonistic relationships tend to result in blaming, polarizing, attributing of negative traits to and projecting ones own faults on the other party. All of this then further impedes the quest for common goals and motivations, the invention of cooperative solutions and the implementation of those solutions. Such antagonisms can be overcome exactly by focusing on common needs and goals that are unattainable for all unless cooperation takes place.

Social psychology experiments further support the idea that a focus on a common goal – which can only be attained through peaceful cooperation – may help to transform an antagonistic relationship into a more constructive problem-solving one.[42] Famous here is the Robbers' Cave Experiment by Muzafer Sherif. Sherif first gave a group of summer campers a range of competitive tasks, which quickly resulted in a highly antagonistic relationship between the two opposing camps. Then, he created a positive interdependence between those groups by putting them in situations where only cooperation could result in mutual benefits. Soon he noticed that the intergroup rivalries started to diminish and a cooperative climate was taking hold.

D. Pushkina[43] then links the degree of mutual antagonism between the warring parties negatively with the degree of commitment towards finding a peaceful solution. He finds that UN Peacekeeping Operations have a higher chance for success when the degree of antagonism is low. This evidence suggests that for engaging in peaceful conflict resolution, a constructive relationship between the parties is helpful, if not crucial.

The antagonistic or constructive relationship among the parties further has an impact on the cost-effectiveness of the negotiation process. Cost-effectiveness here refers to the events taking place on the battle field throughout the negotiation process and the destruction, humanitarian and human toll inflicted while peace negotiations were taking place. It further takes into account any positive or negative evolutions on the ground during the course of the negotiations. A traditional dilemma for external actors is caused by the existing tension between, on the one hand, the wish to swiftly reach an agreement and end the fighting, and on the other hand, the time-consuming need to come up with a *good* and *stable* agreement rather than a mere cease-fire. While political leaders are negotiating peace agreements, fierce fighting may continue on the

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[42] *ibid*, pp. 62-63
[43] Pushkina (2006)

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battle ground. As a result, any delays in concluding an agreement can be sanctioned by high levels of destruction and increased human suffering. The cost-effectiveness of the negotiating process may be heightened by first negotiating a cease-fire and/or alleviating the worst humanitarian crises, and only later engaging in talks for establishing a more sustainable peace. This would allow negotiators to focus more on the content of the agreement to be reached than on the necessity of reaching an agreement.

However, some authors argue that such an approach endangers the 'ripeness' of a conflict.[44] It is often asserted that a mutually hurting stalemate is a prerequisite for parties to willingly engage in peace negotiations. The conclusion of a cease-fire may preserve the stalemate, but bring 'the hurting' to an acceptable level. As a consequence, the will to negotiate a definitive end of the war could decrease. Such conflicts would remain in the grey area between war and peace, with their root causes left unaddressed and with a high potential for renewed violence at a later date.[45]

The use of an elicitive or prescriptive approach

When a mediator is trying to facilitate the negotiation process, he can choose to approach the parties and the process in either an elicitive or a prescriptive manner. To define these terms, we base ourselves on the model used by J.P. Lederach.[46] The mediator approach used can be placed on a continuum, with purely elicitive or prescriptive behaviour constituting ideal types. The underlying idea when using a prescriptive approach is (1) that the mediator knows what the parties need to reach a solution, and (2) it is he who defines the agenda. As such, the knowledge and the capacity of the mediator is deemed more reliable than that of the parties. In the elicitive model, the mediator encourages the parties to discover and to describe the conflict roots, and to identify acceptable solutions.

This dimension of elicitive and prescriptive mediator behaviour appears to return in the mediation strategies among which J. Bercovitch distinguishes.[47] He states that mediators can choose between a non-directive and a directive strategy. Non-directive strategies can be (1) communication-facilitation strategies which have little impact on the formal process or the content of the negotiations, or (2) procedural-formulative strategies that take control over the mediation process as to create a favourable environment for conflict management. Directive strategies tend to impact on the content and the

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[44] Zartman, *The Attack on Humanity: Conflict and Management*

[45] Examples of such 'frozen conflicts' are the dispute between Moldova and Transdniestria (ceasefire 1992), between Armenia and Azerbaijan (ceasefire 1994) and between Georgia and Akhazia (ceasefire 1993).

[46] Lederach (1996), pp 47-70

[47] Bercovitch and Wells (1993)

substance of the negotiation process, eliciting the parties' cooperation by the use of carrots and sticks.

Bercovitch finds that mediators using directive strategies have a higher chance of success.[48] This is, mediators influencing both the agenda and the substance of the negotiations – using a more prescriptive approach – are more likely to resolve the conflict than mediators that are focusing solely on the mediation process, or whose actions are limited to facilitating the negotiations – thus relying on an elicitive approach. However, prescriptive mediator behaviour is not likely to be accepted by the parties if they are capable of reaching an equally favourable outcome by themselves or if the mediator proposals are considered to be 'unfair'. Moreover, Nathan warns that 'agreements that are not shaped and embraced by the parties have little chance of enduring.'[49] He insists that mediators should facilitate problem-solving by the parties rather than trying to solve their problems for them or otherwise risk alienating the stakeholders from the process.

We can conclude, therefore, that whilst a prescriptive approach enhances the chances for a peace agreement to emerge, an elicitive approach increases the odds for an agreement to last.

The endogeneity of the negotiation process

In conceptualizing the endogeneity of a negotiation process, we base ourselves on a definition presented by Simonneli.[50] Under an endogenous negotiation process, we understand that it is a process that follows from the bargaining and the interactions of the parties. It is the main stakeholders that form the internal drive of the process and of the negotiations. An exogenous negotiation process, in contrast, is one in which the parties, even the main stakeholders, have no say. As it was noted earlier, a mediation strategy can focus on controlling the agenda and the procedures of the negotiations, as well as on the entire negotiation process. This might aid the parties in concluding an agreement. However, an exogenous negotiation process might also leave the parties feeling uninvolved in and, therefore, not attached to the peace negotiations.

What is critical here is the question of ownership. When prescriptive or directive mediation strategies are used, parties might feel disowned of the conflict, and this might lead to resentment towards the peace process and the agreements that stem from it. Such parties might reappear as spoilers as they feel they lost control of the process and of what is happening in the negotiations. Outside mediators may also fail to grasp certain cultural, religious or social habits and design an ill-suited negotiation process, resulting in more

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[48] *ibid*
[49] Nathan (2001), p.190
[50] Simonelli (2006)

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difficult – instead of facilitated – communication as participants do not feel comfortable in the procedural settings.

Mediation requested by all parties

When scrutinizing the outcomes of mediated and non-mediated conflicts on their success or failure, results appear to be somewhat ambiguous. Gartner and Bercovitch distinguish between the selection-effects and the process-effects of mediation, that impact on the outcome in opposite ways.[51]

What they call the selection-effect leaves the hardest and most difficult cases to mediation, while easier conflicts will be negotiated directly between the parties themselves. This selection mechanism originates in the costs the parties bare in resources, prestige and alliances when asking external support for settling their conflicts. Therefore, mediated cases might have a higher risk of failure than non-mediated cases, simply because the conflict is more complex and solutions are not within the immediate reach of the parties.

On the other hand, Bercovitch acknowledges the existence of a 'process-effect'. This effect increases the chances of resolution of a conflict when mediation is used. So, while mediation might see a relatively high failure-percentage when compared to conflicts where parties settled their conflict through direct negotiation, the presence of an external mediator *does* increase the chances for successful resolution of the conflict. However, it seems that the positive and/or negative effects of mediation on a conflict are highly dependent on the mediation strategies applied and on the acceptance of the mediator by the parties. This will be further investigated below.

A main characteristic of the mediation process is that it is a voluntary method of conflict resolution. Parties cannot be forced to accept mediation, although pressure may be applied in order to change a party's preferences so that it chooses – in the altered environment – to accept the mediation it originally refused. The problem that stems from such 'coerced' or 'pressured' mediation is that parties may not be inclined to sincerely negotiate an agreement.[52] Even if an agreement is arrived at, it might be deliberately flawed so as to impede its implementation, or parties may simply renege on any concession made during the mediation process. In the same way, if parties opt for a mediated settlement, no specific mediator can be forced upon them. All parties have to agree on which mediator they will ask to help them in ending the conflict. Some claim that such mediator acceptability is dependant on the impartiality of the proposed mediator. Others disagree and believe that the existence of an acceptable mediator of whom the parties believe he or she can bring them a

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[51] Gartner and Bercovitch (2006)
[52] Jablonsky and McCallum (1999), p. 60

more favourable outcome then they could get without mediation – rather than a strictly impartial one – is necessary.[53] This issue shall be discussed below.

It can be concluded that an underlying assumption in the act of requesting mediation, is that the parties possess a genuine desire to settle their conflict through peaceful means. This should clearly aid the peace process.

Impartial mediation

Many researchers claim that a mediator's impartiality is a *conditio sine qua non* for reaching a negotiated agreement acceptable to all parties.[54] Partiality, they fear, is to lead to the suspicion of the 'disadvantaged' party, which might be tempted to defect from the negotiations if it feels its interests are not treated on an equal basis as those of its adversary. Zartman and Touval, however, indicate that parties accept mediators, not because they are impartial, but because they increase their prospects of attaining a favourable outcome.[55] Therefore, a partial mediator of whom it is assumed he can 'deliver' the other party into an agreement might be seen as an acceptable option, as long as his intervention is likely to aid all parties in reaching a better deal than they could otherwise get.

This does not say that mediator impartiality is of no importance at all, but it indicates that its importance lies more in the act of reassuring the parties that the mediator will search for an agreement beneficial to them all, rather than it being a necessary condition in itself. If the parties, for some reason, could be convinced that a partial mediator is more likely to further both their interests, then partiality would not be an impediment, but an advantage.

Furthermore, they argue that a mediator who has some stakes in the outcome, might be more credible in his willingness to reach and to enforce an agreement. Such a mediator is more likely to remain committed even in the face of severe difficulties. A mediator who has no stakes in the outcome might choose to abandon the conflict and the negotiations when things go awry. In some circumstances a mediator's impartiality could undermine the credibility of his willingness to commit himself to a conflict.

Internal-External mediator

The above discussion is also related to the choice for an internal or an external mediator. If parties opt for an internal mediator, it is not always possible to find a credible and strictly neutral mediator. Often, a team of internal partials will be composed by the parties who then tend to choose someone they trust and with whom they are allied to represent their interests. The even-handedness of the outcome is guaranteed by the balance between the representatives of the

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[53] Zartman and Touval (1996), pp. 451-452
[54] For example: Nathan (2001)
[55] Zartman and Touval (1996), *ibid*

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parties. The advantage here is that those mediators know the parties and the conflict in a way that external mediators usually do not. An external mediator, on the other hand, can offer a new vision of or approach to the conflict, as he is looking at it from a distance.

The presence of a clear and compelling vision of the end-state

Before negotiations take place, the desired end-state of the conflict should be defined. This agreed vision on the end-state serves as a guideline for directing the negotiations and creates a framework within which the issues at hand can be discussed. If there is no agreement on what is within and what is without the limitations of the talks, and if no common goals exists, peace negotiations are likely to be very difficult.[56] For negotiations to be a success, the framework delineating the parties' negotiating framework has to be a clearly stated goal. Discussions should be on how the accepted common goal can best be reached. In this way progress can be achieved. If there is no clear or compelling end-state to a conflict, the chances are that the peace agreement becomes a fragmented chaos of incompatible pieces, in which the means to achieve an aim blur with the importance of that goal. This may cause a deep feeling of dissatisfaction as differing opinions on what direction the negotiations need to take might result in an endless 'spinning in circles'.

An example of such a situation is the Middle East peace process between the Palestinians and the Israeli's. Where the former have always demanded the creation of an independent Palestinian state within the 1966 boundaries as provided by the UN Security Council Resolution 242[57], the latter for a long time refused such a deal. The result has been that temporary or intermediary agreements were reached in what seems to be a never-ending peace process, which satisfies few and eventually compromises the peace process itself. Today, Palestinians are demanding that whatever new negotiations will take place, they should be end-status negotiations. This is something which the Israelis have so far refused.

The same goes for an intervention by external actors: a clear vision of the goals of the mission and of when they are to be considered accomplished is necessary.[58] Reasons for this are twofold. If an external actor intervenes to stop intrastate violence, a military intervention to prevent fighting might not do the job. Simply entering the country to stop the fighting and then leave, does not guarantee the absence of a new outbreak of future violence as the root causes of war do not cease to exist.[59] On the other hand, if an actor overstays the time necessary for its legitimate goals and mission to be reached, it risks becoming

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[56] Lewicki, Barry, Saunders and Minton (2003), pp. 236-238
[57] UN Security Council Resolution 242 of 22.11.1967
[58] Carafano and Dillon (2005)
[59] Rotermund (1999)

an occupying force and facing severe opposition both from within the country as from the international community. So, the end-state for a conflict to be terminated should be clear – so that all know what is to be achieved – and compelling – so that the opposition diminishes and parties are willing to cooperate in achieving the stated goals.[60]

Inclusive negotiation process					Exclusive negotiation process
High level of authority of the negotiator					Low level of authority of the negotiator
Symmetric power relations					Asymmetric power relations
Constructive relations between parties					Inimical relations between parties
Elicitive mediation					Prescriptive mediation
Endogenous negotiation process					Exogenous negotiation process
Mediation is requested by all parties					Mediation is not requested by the parties
Impartial mediation					Partial mediation
External mediator					Internal mediator
The parties share a clear and compelling vision of the end-state					The parties share no clear and compelling vision of the end-state

Table 2: Mapping the Process of Negotiation

2. Evaluation of peace agreements

If a peace agreement is to be an important first step towards reaching a sustainable peace, then the content of the agreement can not be neglected. The substance of the peace agreement as well as the perception of and the attitude towards the terms agreed upon is essential if one is to actually implement it. In this section, some content-related evaluation criteria are proposed. These are focusing on the level of support that exists for the outcome, the comprehensiveness of the agreement and the precision of its provisions. Furthermore, the impact of the presence or absence of guarantees during the demobilization period shall be discussed. [61]

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[60] Flavin (2003)
[61] Reychler (2003), pp. 48-49

Voluntary acceptance of the agreement by the parties

It is not surprising that negotiated outcomes that are achieved freely tend to be more stable and durable than agreements that were coerced upon the parties. If coercion was used to get the parties into an agreement, coercion will equally be needed to get them to implement the agreement. If one is not willing to invest significantly in the implementation of the agreement, coercing the parties will only lead to the quick unravelling of the accords once the level of coercion diminishes.[62] A coerced peace agreement might temporarily end the fighting, but it will not bring a sustainable peace unless it is considered to be only the first step in a long transformation process and is followed by a number of widely supported trust-enhancing and peace building measures.

Jablonsky and McCallum[63] indicate that consent is something that can be induced by worsening a party's BATNA[64] through the use of carrots and sticks. Applying pressure for an agreement to be reached can effectively end a war that would otherwise continue. Yet, one needs to be careful about what kind of pressure one uses in a given situation, so as to prevent the pressure from further alienating parties from the peace process and causing resentment towards the one applying it.

Furthermore, coerced peace agreements often suffer from a lack of legitimacy that stems from the breach of state sovereignty. They might cause resentment with the parties that were forced to accept them, leading them to turn away from the peace process. Nevertheless, legitimacy can be found when pressuring the parties is the only available option to end a grave war with immense human suffering despite the lack of 'conflict ripeness'. This is also the case if the warring parties are led by intransigent extremists willing to 'take it to the end' while civilians are dying. But then too, such an agreement cannot be considered to be the end of the peace process, but to be the beginning, and a serious international commitment may be necessary.

Level of internal support

By internal support, it is meant: the level of support on which a peace agreement can count on with the broad population that has to abide by it and especially with the political and military elites of the signatory parties. If an agreement can count on high internal support, implementation of the agreement tends to be easier and the impact of potential spoilers tends to be smaller. If internal support for an agreement is very low, implementation will be more

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[62] Pfetsch and Landau (2000), pp. 21-42
[63] Jablonsky and McCallum (1999)
[64] Best Alternative to Negotiated Agreement. A party's BATNA determines its willingness to engage in negotiations. If the alternative is better than what can be achieved in a negotiated agreement, a party is unlikely to faithfully negotiate an agreement.

difficult, as was proven by the case of Rwanda. A.J. Kuperman indicates that an internally unwelcome outcome of the negotiations, might actually escalate a conflict rather than end it.[65] The aversion for the negotiated terms can be so high as to propel renewed fighting, sometimes of a greater intensity than before. In the Rwandan case, unhappiness by Hutu-elites with the 1993 Arusha Agreement led to the assassination of president Habyarimana which was followed by a genocidal campaign towards their Tutsi-countrymen. In the same way, the Treaty of Versailles, ending World War I, and the aversion of the German people towards its terms, contained the seeds of the even more violent World War II.

The underlying dynamics are not to be underestimated. Hoddie and Hartzell argue that if moderate leaders agree to sign a highly unpopular peace agreement, they risk strong internal opposition and might be replaced by more radical leaders.[66] While taking such a risk may be considered a sign of the genuine desire for peace on their part, it may also spur the intensity of the conflict and make future negotiations more difficult. In general, the internal support for an agreement tends to be higher if the negotiations were inclusive and all parties' interests are reasonably satisfied by it.

Level of external support

Most authors[67] agree that external intervention can temper the intensity of violent conflicts and open up windows towards a durable peace settlement. They argue that parties that were not able to settle their own problems peacefully before the war will be even less likely to do so after the conflict has spiralled into warfare. Crocker, Hampson and Aall go even further and state:

> The absence of third-party engagement may actually aggravate these conflicts, increasing the odds that they will evolve in damaging ways domestically, regionally and even internationally. [68]

The external support for the negotiation process and peace agreement is essential, as it also signifies a willingness to remain engaged throughout the implementation phase. This will be further explained in the section dealing with implementation analysis. Regardless of the relative consensus on external actors possessing a capacity for a positive influence on the outcome of the peace process, more ambiguity exists when asking what type of support or intervention is required. The most repeated stance is that external intervention

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[65] Kuperman (1996)
[66] Hoddie and Hartzell (2003), pp. 306-308
[67] For example: Bercovich and Derouen (2004); Zartman and Touval (1996) and many more.
[68] Crocker, Hampson and Aall (2004), pp. 46-47

in a conflict should be impartial.[69] However, Betts claims that external intervention cannot be impartial and limited at the same time.[70] He argues that foreign actors either be impartial and coerce both parties into an agreement (then the intervention is not limited) or intervene in a limited but partial way, tilting the balance in favour of one of the parties. Other interventions are likely to fail, so he claims.

Despite the overall belief that external support might aid the peace process, some authors do warn for the need of coordinating the support given[71] and the danger of taking away the ownership of the conflict from the parties[72]. Uncoordinated support will lead to confusion and loss of resources due to inefficient use. Disowning the parties from their conflict will make them dependent on the external actors to prevent new fighting and does not lead to a self-sustaining peace. This is argued to have been the case in Bosnia where the negotiation process, the Dayton Peace Agreement and the implementation thereof, all relied heavily on the pressure applied by international actors and especially by the United States.

Comprehensiveness of the content

The level of comprehensiveness of an agreement is to indicate in how far all of the pending issues have been addressed. For reaching a comprehensive peace, the peace agreement should provide an adequate solution for all of the conflicting interests and needs between the parties and this covers many fields: politics, security, economy, reconciliation, humanitarian, etc. The comprehensiveness of the agreement is an important determinant of whether a sustainable peace will be reached. If core issues were not discussed and resolved correctly, the chances are that fighting will resume to settle them on the battlefield.

On the other hand, if one wants to address all open issues in a single agreement, the negotiations might fail to produce any agreement at all. Quite often, issues carrying the risk of losing the agreement are being deferred to a later settlement mechanism. This creates the opportunity of first bringing parties closer together by using trust-enhancing measures. It appears that although it may not be necessary (or possible) that all issues are settled during the peace negotiations, it might be crucial that parties at least have a vision of attaining a peaceful settlement in the near future. Therefore it should be agreed upon during the peace negotiations *when* and *how* the issues will be settled.

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[69] For example: Nathan (2001)
[70] Betts (1996)
[71] Van Tongeren (2001)
[72] Nathan (2001), pp.189-191

Reasonable satisfaction of interests

A basic principle of integrative negotiation theory is that all parties should be satisfied with the agreement. If not, a party may renege on its earlier commitments or it might refuse to negotiate with the other party at a later stage.[73] Parties are not likely to be satisfied with an agreement if there was no reasonable satisfaction of their interests. By this we understand that the compromises struck and concessions made need to be accompanied by acceptable gains in a way that no vital interests were neglected or endangered and that the overall outcome can be considered 'a just agreement'. Failing this, parties might be obliged under internal pressure to renounce the agreement at a later date and – even worse – to abandon the peace process as a whole. If a peace agreement succeeds in satisfying a significant portion of the needs of the parties, this might generate some goodwill and trust towards peaceful conflict-settlement mechanisms. As such, the parties might be encouraged to manage their future conflicts peacefully, rather than by resorting to war. If, however, the parties feel they were 'sold out' during the peace process, they might choose to resume the fighting and to try to attain their goals through war.

Presence of power-sharing guarantees?

Power-sharing guarantees ensure the most important stakeholders of a 'fair share' of the political power. They prevent that post-war elections create overall losers, who might be incited to pick up their weapons and restart the war, as did UNITA after the Angolan elections following the 1991 Bicesse Accords.[74] This could be viewed upon as simply installing a proportional election system for national elections. However, some authors fear that such an approach will not work when parties believe themselves capable of gaining total power, whether on the battle-field or through winner-takes-all elections.[75] Those parties will only very reluctantly accept anything 'less' than full power. A solution might be to see power-sharing more as a system encompassing all society. As Ian Spears puts it:

> (…) power sharing should involve a simultaneous and yet incremental effort to find agreements on two levels, both of which are necessary, but neither of which, on its own, is comprehensive. At the national level, efforts need to be directed towards transcending the largest and potentially most explosive power centres. At the subnational level, a more piecemeal collection of territorially limited agreements involving local actors should also be struck. The result, then, is a core agreement but with power decentralized down to a series of satellite agreements. Not only is such an organic, two-track framework

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[73] Lewicki, Barry, Saunders and Minton (2003), pp. 10-11
[74] Knudsen, Mundt and Zartman (2000)
[75] Lyons (2002), pp. 216-222

> more achievable while still remaining inclusive, it is also less
> likely to lead to the collapse of the whole process should any one
> of the agreements break down. In the end, all parties are included
> in the peace process at some level, but no one agreement has to
> include all parties and groups.[76]

Hoddie and Hartzell point out the value of power-sharing arrangements in signalling a genuine desire for peace.[77] They believe that signing a power-sharing agreement will be costly for the parties because (1) parties voluntarily limit the influence they might have in shaping the post-war society, and (2) by signing such an agreement they risk losing credibility among some members of their group. Parties are unlikely to suffer those costs, they argue, if they do not have a genuine desire for peace.

Adequate treatment of all conditions for sustainable peace

We discern the following conditions as necessary for reaching a sustainable peace: (1) the presence of an effective system of communication, consultation and negotiation; (2) a cooperative security mechanism; (3) multilateral cooperation; (4) the creation of an integrative climate, (5) the consolidation of a democratic political system; and (6) a sustainable social free market. Further, all of the before-mentioned 'peace building blocks' require the presence of a critical mass of peace building leadership.[78] In the absence of these conditions no sustainable peace can exist. However, under 'adequate treatment' we can understand the need of the peace agreement to take into account that there are conditions which necessarily need to be fulfilled before a sustainable peace can be reached and that the first steps for realizing these conditions need to be made there and then, but *not* that all the conditions have to be realized with the immediate implementation of the peace agreement.

It can be argued that while the peace agreement is the starting point of the process towards sustainable peace, the limitations of the warring parties and their surroundings often do not allow for attaining a fully satisfying agreement straight away.[79] It is more likely that only once the fighting has ended and trust-enhancing and reconciliation measures have been taken, that war-torn societies can face their more long-term needs and find an acceptable modus vivendi which eventually can lead to a sustainable peace.

Principled/Concrete measures

A principled agreement draws out a vision of what is to be attained; it states the common goals and the aims the parties have agreed to achieve. While principled agreements leave the parties some choice in *how* to fulfil their commitments and show a broad flexibility in the ways to act, concrete

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[76] Spears (2000)
[77] Hoddie and Hartzell (2003)
[78] Reychler (2003), pp.48-49
[79] Hartzell (2002), pp.353-354

measures focus more on the means by which those aims are to be reached. By fixing the means of how a goal should be achieved, parties have less flexibility in their actions. The advantage of concrete measures is that all parties have a clear view of what commitments were made by whom and cheating will be more difficult and shall be easier to recognize.

However, by focusing on the measures one is to take, the goal of the agreement might suffer from a lack of attention. In governance studies the phenomena where administrations implementing a certain policy place undue attention on the means and thereby turn it into their goal – the original one being forgotten – is well-known. The implementation of overly concrete peace agreements might suffer from the same goal-means confusion that is occasionally visible in the governance of a state.

An example here could be the Annex VII of the Dayton Peace Agreement (DPA) that led to the creation of the Commission for Displaced Persons and Refugees. The Commission was to decide on the return of the real property of refugees and IDP's[80] or, when such a return was impossible, on the compensation for the victims. This was intended as a way to enforce the refugees' right of return that was guaranteed by the DPA. While the concrete measures of the agreement had been implemented, the effects turned out to be opposite of the intended goal. Many refugees used the Commission to receive compensation in order for them to continue their lives elsewhere, whether within or outside Bosnia and Herzegovina, rather than to enforce their right to return.

Interpretative Freedom/Precise Agreements

Agreements can leave the parties a large measure of interpretative freedom, be very precise, or be something in between. Some interpretative freedom will always be required, as written rules – such as laws or international agreements – do not automatically fit a real-life society and its environment. For reaching a harmonious dynamic between the practical implementation and the theoretic agreement, some flexibility is needed. Too much interpretative freedom however, may jeopardize the entire agreement and its implementation as parties tend to 'interpret' their commitments and those of others in the way that suits them best. To prevent these types of scenario, parties could agree on a procedure by which the interpretation of their agreement is conferred to an impartial body with sufficient skills and understanding.

Preciseness then, gives parties a clear image of their commitments and of the commitment of the others, but leaves little flexibility in the implementation of the agreement. The rigidity of such an agreement may be equally detrimental to implementation, as it may simply turn out to be impossible to comply with the

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[80] IDPs: Internally Displaced Persons

precise rules in a real-life environment. Yet, especially in war-torn societies, a sufficient level of preciseness will be required as to allow the parties to verify compliance and monitor progress, for mistrust tends to be high and the risk of renewed armed violence is often a luring option.

Third party guarantees for demobilization period

The demobilization period is the time-frame in which all parties will withdraw their troops towards agreed places and reintegrate them into society. Any peace agreement is very fragile in this phase. Any sign of unwillingness by a party to effectively demobilize can quickly lead to distrust and a resumption of the fighting, as the parties find themselves in a traditional security dilemma.[81] In this phase the presence of external actors can be crucial to enhance the trust whether by verifying the parties' compliance, by sending in peacekeeping forces to 'separate' the parties and monitor the demobilization, or by simply guaranteeing some form of 'punishment' of cheating parties and/or some 'reward' for compliance. B. Walter argues that the importance of third parties lies in the incentives they can give to the actors to stay engaged in the political process. She defines security guarantees as 'any implicit or explicit promise given by an outside power to protect adversaries during the treaty implementation period.' [82]

However, Hoddie and Hartzell warn us that such enforcement by third parties tends to erode the trust-enhancing effects that might come from successfully implementing the peace agreement.[83] They point out that in the costs the parties bear to implement the agreement, one can find strong signals of their genuine attachment to peace. If agreements are implemented under third party pressure, these important signals lose much of their value. They differ from Walter and Stedman in arguing that the role of third parties should be limited to monitoring the implementation of and verifying the compliance with the agreement.

Spears also pleads for a limited role of any external actors to which the parties should have consented. He fears that the intermingling in another country's affairs can cause resentment towards the intervener and/or the peace process itself.[84] In some cases, as has happened with the US presence in Somalia, such a third party might turn into a warring party if it is considered to be 'hostile' by one or more of the warring factions.

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[81] Hoddie and Hartzell (2003)
[82] Walter (1997), p. 345
[83] Hoddie and Hartzell (2003)
[84] Spears (2000)

Voluntary acceptance of the agreement					Parties were pressured/coerced to accept
Internal support for the agreement is high					Internal support for the agreement is low
External support is high					External support is low
The agreement is comprehensive					The agreement is not comprehensive
Reasonable satisfaction of interests					No reasonable satisfaction of interests
Power-sharing guarantees					No power-sharing guarantees
The conditions for sustainable peace are dealt with in a satisfactory manner					The conditions for sustainable peace are not dealt with in a satisfactory manner
The agreement consists of concrete measures					The agreement mainly consists of principles
Precise agreements with little space for interpretation					Interpretative agreements with little precision in its provisions
Adequate third party guarantees for demobilization					Inadequate third party guarantees for demobilization

Table 3: Mapping the elements of the peace agreement

3. Analysis of the implementation

Reaching a negotiated agreement is an important first step in the peace process. However, the real value of an agreement is being realized only throughout the implementation process. Indeed, many peace agreements look good on paper but are never even implemented. Or they are implemented only partially or in a way contradicting the aims of the agreement itself. In such cases, either the fighting resumes, or the countries linger in the grey area between war and peace, their security situation marked by instability and uncertainty. In order to gain an insight in what can go right or wrong during the implementation phase, we look at the following evaluation criteria: whether or not (1) the agreement is politically and/or legally binding; (2) effective verification measures are taken and appropriate sanctions made available; (3) the parties have an adequate capacity for implementing the agreement and adequate external support is

being provided; (4) appropriate procedures for handling disputes are in place and; (5) efforts are taken to inform and educate the public .[85]

Is the agreement politically binding?

Under politically binding agreements we understand that the agreement is not a mere statement of intent, but that parties have committed themselves to a certain political course, a type of behaviour and a policy for ending their conflict, and that to renege on those commitments will cost them a good amount of political credibility. [86] These costs in prestige, credibility, and maybe other sanctions give the parties an extra incentive to implement the agreement fully.

Is the agreement legally binding?

Under a legally binding agreement we understand that according to international or national law countries and/or parties are obliged to fulfil what they agreed upon.[87] In armed conflict, however, functional national courts which can oversee the obligations of internal parties might not exist. In international conflicts where international law applies, the presence of legal sanctioning mechanisms is even rarer. Therefore, parties are often responsible for enforcing the implementation of the agreements themselves. This mechanism tends to create mistrust as no one guarantees the other parties' compliance, yet they themselves have to implement the agreement – for example, demobilize –and thus become more vulnerable for the cheating behaviour of the others. This security dilemma – one's insecurity over the other party's behaviour incites him to cheat, while his cheating behaviour spurs the other party to renege on its own commitments – explains the importance of external support in the verification and the sanctioning of violations to the peace agreement, as we will see below.

Are there effective verification measures present?[88]

The question which is asked here is: 'Is anyone verifying the parties' compliance with the terms of the negotiated agreement in a way as to discover and make public any violations and *who* is doing that?' Whatever organization, country or person is responsible for the verification, it is important that all parties have sufficient trust in the honesty and reliability of the verifier(s). As was indicated earlier, for each party its agreement to stay on track with the implementation process is dependent on the belief in the other parties' compliance. Therefore, a credible verification mechanism is essential. If parties

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[85] Reychler (2003), pp. 49-51
[86] Simmons (1979)
[87] Smith (1976)
[88] Hoddie and Hartzell (2003)

are uncertain whether or not the other party is doing its share, they might refuse further cooperation as they might feel that their security situation is endangered or that the real outcome could become something very different from the negotiated outcome.

Are there appropriate sanctions available?

In any country, the mere existence of a law seems insufficient to guarantee the compliance of its subjects. Verification mechanisms to ascertain whether or not a breach of the law has taken place need to be accompanied by effective sanctioning mechanisms. These create incentives for those subjected to the law to abide by it, as non-conforming behaviour is likely to be noticed and punished, resulting in a worse outcome than one would have if he/she had shown conforming behaviour. The same goes for parties to a peace agreement. Yet, the goal of sanctions is not merely to punish those that are violating the law or the terms of the agreement, but even more so to protect those abiding by them. As Smith explains:

> 'Sanctions' are therefore required not as the normal motive for obedience, but as a guarantee that those who would voluntary obey shall not be sacrificed to those who would not. To obey, without this, would be to risk going to the wall. Given this standing danger, what reason demands is voluntary co-operation in a coercive system.[89]

So, not only does the implementation of the agreement have to be verified, breaches of the terms of the agreement have to be appropriately sanctioned if the peace process is to remain on track. If one of the parties is not living up to its commitments, this does not have to be the end of the peace process, provided that the violations are being appropriately sanctioned and that the sanctions suffice to spur the defective party into renewed cooperation. If such a system of sanctions is available, it might serve to both reassure the parties that are genuinely cooperating that they will not end up as the victim of their own trustworthiness, and to deter potentially defective parties from actually defying the agreement.

Adequate capacity for implementation[90]

One of the factors influencing the chances of a conflict spiralling into violence is the respective wealth of a country. It appears that by the same token, peace implementation is more likely to be successful if a country possesses a relative wealth. An explanation for this is the financial expense of peace building measures. Poor countries, if left by themselves, often cannot afford the necessary steps to be taken for reaching a sustainable peace. Therefore, if

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[89] Smith (1976), p.30
[90] Based on: Call and Cousens (2007); Hoddie and Hartzell (2003)

things go wrong during the implementation, it is necessary not only to look at *what* is going wrong, but also to find out *why* it is going wrong. Are the parties being non-compliant because they choose to, or are they genuinely cooperative, but lack the means and the capacity for successfully implementing the agreement? Some implementation measures might require human and material resources, or administrative and other capacities that are simply not present in the area. Foreign expertise might be too expensive for the less wealthy parties. Or unforeseen evolutions might impede successful implementation under existing terms. Here, sufficient external support can be crucial.

Was there an adequate external support?[91]

In all of the previous implementation criteria, the value of external support is visible. Reliable (some say impartial) external actors can create trust and keep the implementation process on track by verifying the parties' compliance with the agreement and by sanctioning any violations of its terms. They can enhance a party's capacity where it was inadequate to ensure the implementation of the agreement. If external parties are uninvolved in the implementation process, chances for the peace process to derail are higher than if third parties are present. Yet, once again opinions diverge on what role such external parties should play. Some, like Bercovitch, Lederach, Zartman and Touval seem to believe that the more engagement, the better.[92]

However, external actors cannot parachute-in and take over the process from the parties. First, an external actor wishing to assume an active role needs to be acceptable to all the parties involved, else they might be viewed as an 'occupier' rather than as a guarantor of the peace process. For some, this acceptability is linked with the impartiality of the actor. Others indicate that it is the promise of a better outcome that determines an actor's acceptability to the parties.[93] Second, the role of the external actor should be limited to those areas where his presence can actually make a positive contribution.[94] Critics fear that too much intervention would disown the parties from their peace process and could lead towards disinterest or even resentment.

Are there appropriate procedures for handling disputes during implementation?

Due to time and resource constraints as well as to the unwillingness of the parties, some issues are likely to be left out during the negotiations. Throughout the implementation phase it might become clear that some issues had been left out of the negotiations that should have been addressed anyway, or that new

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[91] Hoddie and Hartzell (2003)
[92] Bercovich and Derouen (2004), Lederach (1996) and Zartman and Touval (1996).
[93] For example: Zartman, *The Attack on Humanity: Conflict and Management*
[94] Eguren (2001)

issues have arisen because of changes in the conflict environment. Or, divergent interpretations can create confusion about the real commitments and obligations of the parties. Therefore, the parties should have previously agreed upon the procedures to which they can turn to settle those issues in peaceful ways. This should decrease the chances of parties getting stuck in a negative spiral towards renewed warfare because of the lack of peaceful resolution mechanisms.

The creation of ad hoc mechanisms for this purpose is not advisable. The problem with ad hoc mechanisms is that each party would opt for the procedure that would prove favourable to them, and all of this in the heightened tension of the dispute.[95] Furthermore, it would lead to uncertainty and would be irreconcilable with the principles of the rule of law.

Efforts to educate and inform the public

After concluding a peace agreement, the people affected by it should be adequately informed and educated about the peace and about the measures and steps that will be taken. A good education and free access to objective information about the peace agreement will aid the peace process. A publicly endorsed peace agreement has more chances for success than one that is rejected by the broad public. Therefore, it is important that the opinion makers – whether media-related or not – are well-informed about the peace agreement and its provisions, and about the practical implementation of measures, so that they can pass on this knowledge and create a favourable public opinion.

For this, an important role goes to the media. Although one can organize workshops, send representatives into the field, and set up information posts at, for example, city halls, the broad public will hear of the agreement and form its opinion of it on the basis of information provided by traditional media and by peers. What impact the print media, audiovisual media and online media will have on the public opinion all depends upon the media-landscape of the country[96] and on the orientation (war- or peace-oriented) of the media.[97] If the media depicts a peace agreement as detrimental to a party's interests, as a humiliating truce, or in some other way discusses the peace in a very negative manner, then the chances are greater that public opinion will reject the agreement. If the media positively reports about the peace and focuses on the opportunities for a new start, public opinion will likely be more satisfied with the agreement.[98]

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[95] Based on: Wouters (2002), pp. 8-9
[96] Jusic, *Media Landscape. Bosnia-Herzegovina*
[97] Based on: Gardner, Ellen (2001), pp.304-308
[98] *ibid*

In a more long-term way, the education of children can play a role in peace building. After World War II, the French and German history books were written as to present a more or less fair account of their common history and the war(s). It was believed that nationalistic and biased accounts of the war could impede the future generations from cooperating constructively and re-create a new cycle of nationalisms based on 'historic atrocities by the other.'

The agreement is politically and legally binding					The agreement s not politically and legally binding
There are effective verification measures					Verification measures are absent or ineffective
Appropriate sanctions are available					There are no or only inappropriate sanctions available
Adequate capacity for implementation exists					Inadequate capacity for implementation
Adequate external support					Inadequate external support
Appropriate procedures for handling future disputes					No or inappropriate procedures for handling future disputes
Public opinion is well-informed					Public opinion is ill-informed

Table 4: Mapping the Implementation Process

Conclusion

In this article a codebook was proposed for evaluating peace agreements. The evaluation criteria used all have an impact on the likely success or failure of peace negotiations. By scrutinizing them more closely, we tried to clarify the underlying determinants and dynamics that make and break peace agreements However, the impact of our criteria is rarely static and often is dependent on other and intermingling variables. Therefore, the presentation of the positive and negative effects that arise from certain criteria remains a crude sketch. It is hoped that this article, although unable to fully establish the links and dynamics between the variables presented – which would require a more profound research – provides a useful insight as to what elements are playing and as to how they are affecting the prospects of success or failure of peace agreements.

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II. THE DAYTON PEACE AGREEMENT[99]

On paper, we have peace.

To make it work is our next and greatest challenge...[100]

Introduction: the death of Yugoslavia

In late 1995 a peace agreement was signed in Dayton, Ohio that would end four years of brutal warfare in the Western Balkans. Despite the broad enthusiasm on which the DPA could count, implementing it would prove a daunting task. Here, the negotiations, the agreement and the implementation of the DPA will be evaluated in the search for explanations. For this, the evaluation criteria proposed in the theoretical part of this research will be used. However, before looking at the negotiations, we will first have a glimpse at the conflict itself and at the context in which the negotiations had to take place.

When Josip Broz Tito, the authoritarian leader of the Second Republic of Yugoslavia died in May, 1980, his policy of eliminating all possible opponents resulted in a power vacuum. No politician seemed to be able (or willing) to keep the country unified and soon the centrifugal forces of emerging nationalisms became visible. Especially from within the two dominant peoples of Yugoslavia, the Serbs and the Croats, radical leaders emerged.[101] In Serbia, Slobodan Milosevic preached the dream of a Greater Serbia, while the Croatian leader Franjo Tudjman supported the idea of a Greater Croatia. In Slovenia and FYROM the desire for more autonomy was growing, while the number of people defining themselves as 'Yugoslav' diminished.

All of this led to increasingly serious ethnic tensions, which were exacerbated by the economic difficulties of the 1980's, lowering the standard of living and increasing the competition for jobs and housing. Slovenia, fairly unhappy with the Kosovo-policy conducted by the Serbian majority, was aiming to reform the Yugoslav Federation into a confederation but failed to gain the support of the republics other than Croatia. On June 25, 1991, both Slovenia and Croatia declared their independence.[102] It was the start of the outbreak of violent conflict, which would reach an unexpected intensity in the republic of Bosnia and Herzegovina.[103]

Bosnia and Herzegovina differed from the other republics of Yugoslavia in the absence of a clearly dominant ethnic group. It consisted of a population of Muslims (44%), Serbs (39%) and Croats (17%).[104] While the Bosnian republic originally supported the Yugoslav Federation, the independence of Slovenia and

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[99] In this text, the Dayton Peace Agreement will also be referred to as the 'DPA' or as the General Framework Agreement for Peace.
[100] Holbrooke (1998), p. 312
[101] Markusen and Mennecke (2004)
[102] Lapping (1995)
[103] Bosnia and Herzegovina, Bosnia and BiH will be used interchangeably in this text.
[104] Markusen and Mennecke (2004)

Croatia changed its position dramatically. The dominance of the Serbs within what was left of the Federation had increased in a way it became unacceptable for the Bosnian Muslims, who now wanted an independent Bosnia and Herzegovina within the boundaries of the then Bosnian republic. The Bosnian Croats on the other hand, preferred joining their brethren in Croatia and creating a Greater Croatia. In October, 1991, Bosnia declared its sovereignty, and in March 3, 1992, followed a declaration of independence, after holding a referendum that was boycotted by the Serb population.

For the Bosnian Serbs this new evolution was unacceptable. Accustomed to being a part of the dominant ethnicity in Yugoslavia, their new role as a minority group seemed unbearable. Demographic tendencies within Bosnia – where the Muslim population grew, while the number of Serbs was declining – further seemed to compromise their position. Important here is that the number of jobs in socialist Bosnia was divided by an ethnic key. The changes in the ethnic composition[105] resulted in the Serbs being designated less of the already scarce jobs, which increased ethnic tensions even further. When on April 7, 1992, the US and several European countries recognized the independence of Bosnia, the Bosnian Serbs declared the independence of a Serb Republic (Republika Srpska) on the territory of Republic of BiH.[106] This move was strongly rejected by the Government of Bosnia and Herzegovina and the war began.

A. Conflict Mapping and Conflict Analysis

Who was fighting: the parties involved

The Bosnian war is often viewed upon as a form of triangular conflict, in which ethnicity played a major role by pinning Muslims, Croats and Serbs against one another. In this paper, we will not distinguish the warring parties in terms of ethnicity, as this entails the risk of making unjust generalisations. Rather, we will look at their allegiance towards a specific state-form for future Bosnia. This allows to incorporate the Bosnian Croat separatists and the Bosnian Croats that remained loyal to the Bosnian Government without blurring the distinction. We will also discuss the secondary warring parties and the most important third party actor. However, the analysis will be limited to the most important stakeholders only and the aspect of volunteer forces, for example, will not be touched upon.

Primary warring parties

Federation of Bosnia and Herzegovina

The Federation of BiH was fighting for a unified Bosnia that would comprise the whole of the former Bosnian republic of Yugoslavia. It was the common front of Bosnian Muslims and Bosnian Croats that was created with the 1994 Washington agreement, after the so-called Muslim-Croat war had ended.[107] It included the

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[105] The Serbs had lost their former majority positions in several municipalities due to demographic tendencies.
[106] Lutard (1998), pp. 115-117
[107] Daalder (2000), pp. 26-27

Croatian Republic of Herzeg-Bosnia and those who had been consistently loyal to the Government of BiH, mainly Bosnian Muslims. This front was fighting the Republika Srpska and the Autonomous Province of western Bosnia, who wanted to secede.[108] Yet, the mutual mistrust between Croats and Muslims that had reigned throughout the period of the Croatian Republic of Herzeg-Bosnia was not lightly forgotten, and the Federation would remain very weak and finally be renegotiated at Dayton.[109]

Croatian Republic of Herzeg-Bosnia

The Croatian Republic of Herzeg-Bosnia was proclaimed in 1993 by nationalist Croats who wanted to join their kin in creating a Greater Croatia.[110] With Bosnia leaving Yugoslavia because of Serb dominance and the Republika Srpska seceding from Bosnia because of Muslim dominance, some Bosnian Croats did not see why they should be a minority in Bosnia's leftovers if they could be a majority in their own nation-state. Although Herzeg-Bosnia was fighting both the Government of BiH and Republika Srpska, soon the main warring was with those who were still defending the Government of Bosnia and the idea of unified Bosnia.[111] With Republika Srpska firmly controlling 70% of the Bosnian territory, the nationalist Bosnian Croats and the nationalist Muslims started to fight each other over who would control the remaining 30%. However, it needs to be said that in some places Muslims, Croats, and Serbs were still joining forces for realizing a unified Bosnia.[112] In 1994, strong US/Croat pressure forced the leaders of Herzeg-Bosnia to sign the Washington Agreement by which they became part of the Federation of BiH, and formed a common front with the Government of BiH in the war against Republika Srpska.

Republika Srpska

When Bosnia and Herzegovina declared its independence, the Serb political leaders in BiH refused to be part of this new Muslim-dominated state, where they would lose their former position as an ethnic majority group. They resented that the Muslim majority could make decisions negatively affecting them and feared they would be forced to uphold the laws of an Islamic state.[113] They wanted either to join their brethren from Serbia in the Yugoslav Federation, or to become independent. In this they were supported by Serbia,[114] and the Republika Srpska was created and declared independent. When this independence was rejected by the Government of BiH, the Bosnian War erupted. Their main war-goal would

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[108] 'Mediterranean – Bosnia Herzegovina' in *Uppsala Conflict Database*, Uppsala University – Department of Peace and Conflict Research, (University of Uppsala Conflict Database: http://www.pcr.uu.se/database/)
[109] Chollet (1997)
[110] *Third Amended Indictment. The International Criminal Tribunal for The Former Yugoslavia. The Prosecutor of The Tribunal Against Enver Hadzihasanovic and Amir Kubura*, Den Haag, International Criminal Tribunal for The Former Yugoslavia, 26.09.2003 (International Criminal Tribunal for The Former Yugoslavia: http://www.un.org/icty/indictment/english/had-3ai030926e.htm, last accessed: 07/06/08)
[111] Kumar (1997), pp. 39-71
[112] 'Mediterranean – Bosnia Herzegovina' in *Uppsala Conflict Database*, o.c.
[113] Slack and Doyon (2001)
[114] Lapping (1995)

soon be to conquer as much land as possible for an 'ethnically pure' Serb nation-state to be built on. That state then could choose to join Yugoslavia – what was left of it – or to become independent. As a consequence, Republika Srpska was fighting the Muslims and the Croats who were striving for a unified BiH. Together with the Croatian Serbs they were also supporting the Autonomous Province of Western Bosnia.[115]

Autonomous Province of Western Bosnia[116]

In 1993, during peace talks, the Bosnian President Alija Izetbegovic agreed to a plan that was dividing Bosnia into three – ethnically based – territories. Fikret Abdic, a member of the Bosnian state presidency, disagreed with this dismemberment of Bosnia. He maintained that multiethnic relations were functioning well in his region, Bihacka Krajina, in north-west Bosnia. In September 1993, Abdic declared the 'Autonomous Province of Western Bosnia', the area around Bihac, to have the same status as the three ethnically based states that were already taking form. The new entity would constitutionally guarantee the equality of all ethnic groups. The inhabitants of the 'Autonomous Province of Western Bosnia' set up their own 400-strong 'Constituent Assembly' and elected Abdic as President. The Bosnian government immediately declared Fikret Abdic's claim of Bihac autonomy illegal. Incompatible aims about the constitutional status of the Bihac territory had thus developed. F. Abdic was supported by the Croatian Serbs in the Krajina and by Republika Srpska who could link their respective territories through the Autonomous Province of Western Bosnia. His adversaries were the Federation of BiH and Croatia. The Autonomous Province of Western Bosnia would suffer military defeat in 1995.

Secondary warring parties

Serbia

Milosevic' Serbia was guided by strong nationalist tendencies. It heavily opposed the independence declarations by the other republics, as it had constituted the dominant force in the Yugoslav Federation and saw its influence waning. Unable to keep the Federation together it aimed to create a Greater Serbia, which consisted of all the areas populated by the Serbs.[117] As such it supported – often secretively – the Croatian and Bosnian Serbs trying to secede from their newly independent republics and to join their kin in Serbia. Because of this and partly because of the policy of the US – demanding that Milosevic would represent the Bosnian Serbs and refusing to negotiate directly with them – Milosevic had a very strong influence over the Bosnian Serb actions and later forced them to agree with the Dayton Peace Accords.[118]

Croatia

Croatia too was prey to a radical ethno-nationalism, with its President – Franjo Tudjman – upholding the dream of a Greater Croatia. When Bosnia declared its

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[115] 'Mediterranean – Bosnia Herzegovina' in *Uppsala Conflict Database*, o.c.
[116] *ibid*
[117] Lapping (1995)
[118] Holbrooke (1998), pp. 105-106, 310-312

independence, Croatia supported the Bosnian Government, as did the Bosnian Croats. In the meantime they were considering that the newly independent state could more easily be partitioned between the ethnic groups, with Croatian populated areas being annexed by Croatia.[119] When fighting erupted between the Croatian Republic of Herzeg-Bosnia and the Bosnian Government, Croatia supported its ethnic kin in battle. However, US pressure prevented their full-scale participation in the conflict. As it later appeared, the question of Eastern Slavonia – an important part of Croatian territory under the control of the Croatian Serbs – was of a much greater importance for Croatia than the outcome for the Bosnian Croats in the Bosnian conflict.[120] After the 1994 Washington Agreement, Croatian and Bosnian offensives would be coordinated, with the Croats supplying the artillery that the Bosnians were lacking.[121] At Dayton, Croatia would finally gain Eastern Slavonia back through negotiations. [122]

Third Parties: mediators and external intervention

<u>The United States</u>

Although the US was never really uninvolved in the conflict, for a long time they seemed to be more of a spectator than an actor. Previously, they had supported several failed diplomatic efforts and in 1994, they had pressured the Croatian Republic of Herzeg-Bosnia and the Government of Bosnia into forming an alliance against Republika Srpska. This was part of an attempt to 'level the playing fields'. However, it wasn't until the summer of 1995 that the US launched a big-scale diplomatic effort – supported by carrots and sticks – while threatening to completely withdraw from the conflict if a settlement was not obtained.[123] This diplomatic offensive was a reaction on the attacks against UN designated safe areas – jeopardizing the credibility of the UN in the eyes of the world – followed by the shelling of a Sarajevo market.[124] The US then clearly stated that it saw the Serbs as being the main perpetrators of the atrocities in Bosnia, with the Bosnian Muslims being the primary victim. Still, the US was the only mediator able to get the trust and confidence of all of the warring parties, as they had enough credibility to 'guarantee' the agreement by punishing the violating parties with the use of economic and military sticks. This diplomatic effort would result in de Dayton Peace Accords, ending four years of ethnic violence in Bosnia. The commitment of the US to end this conflict and to guarantee the peace agreed upon had been a crucial element to end the war.

<u>Russia</u>

Russia had a long historical tie with the Serbs and openly questioned the impartiality of the UN and NATO. They felt that the West upheld a vision of 'good' Muslims vs. 'bad' Serbs.[125] However, what was really at stake for

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[119] Kumar (1997), pp. 39-71 and Lapping (1995)
[120] Chollet (1997), pp.183-186
[121] Lapping (1995)
[122] Chollet (1997), pp. 218-219
[123] This was called the 'Endgame strategy.' See Daalder (2000), pp.81-116
[124] Chollet (1997), pp.16-20
[125] *ibid*, pp. 103-105

Moscow was its own prestige. Still recovering from the fall of communism and the end of the Soviet Union, Russia tried to reassert and consolidate its Great-Power status and demanded to be included in whatever solution was proposed. A main pain point was the role of NATO, both during the conflict as in the implementation of the agreements.[126] That the North Atlantic Treaty Organisation was operating on former communist territory was considered to be humiliating. This feeling was exacerbated by the tension caused by growing Western influence in the former communist countries all over Europe, while the influence of Russia was fading. Though it was deemed important to keep the Russians on board, the US negotiation team would try to limit the information given to them to the minimum necessary for this purpose. Russia's role remained limited to being consulted as a part of the Contact Group, and to provide troops in support functions throughout the implementation phase under US (not NATO) command.[127]

Europe

For Europe, the Bosnia chapter would become a black page in its recent history as the European Union and its Member States failed to decide upon a unified and coherent approach towards the conflict.[128] Multiple efforts to mediate a solution for the most violent conflict on European soil since the Second World War resulted in just as many failures. Disagreements and quarrelling between Member States prevented effective actions, and the willingness to harness military means to end the killing was dependent on the participation and approval of the United States. While recognizing the importance of satisfying Europe's need to be part of the solution – since the Europeans would have to play a crucial role in the implementation of the Agreements – the US wanted to avoid Europe's interfering in the Dayton negotiations as much as possible.[129] Furthermore, the premature recognition of Croatia's independence by some European countries (under pressure of Germany), and later of Bosnia's independence, seemed to have played a role in the outbreak of violence in the country.[130]

Contact Group

The Contact Group had been created in 1994, after several peace plans had been rejected. Its members were the US, Russia, the UK, France and Germany. The goal of the Contact Group was to coordinate the attempts of the international community to settle the conflict and to propose an acceptable peace plan.[131] This resulted in the 1994 Contact Group Plan that provided for a 49%-51% division of the territory of BiH, of which 49% would go to the Republika Sprska and 51% to the Federation of Bosnia and Herzegovina.[132] Throughout the negotiations the US team had started in 1995, the role of the Contact Group was limited to 'being consulted', which in fact meant 'being informed'. And even this was interpreted

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[126] Holbrooke (1998), pp. 205-214
[127] *ibid*, pp. 205-214
[128] Tuathail, (2006), pp. 144-145
[129] Chollet (1997), pp. 153-160
[130] Dragnich (2006), p.48 and Kumar (1997), p. 49
[131] Daalder (2000), pp. 27-31
[132] *Ibid,* pp.28-30

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in a very minimalist way by Holbrooke who kept the Contact Group members just enough involved, to keep them 'on board'.[133] His explanation was that the internal differences and the leakages within the Contact Group impeded effective negotiations.

North Atlantic Treaty Organisation

During the conflict itself, NATO's role was limited to the provision of support for the UN troops by lifting air strikes against those warring parties violating the terms of the UN mandate. A 'dual-key system' was put in place, where both the NATO commander and the UN Secretary-General had to approve the timing and target of the strikes.[134] Because of the vulnerability of the UN troops on the ground, the UN was very reluctant to approve the strikes. This ultimately impeded the efficiency of the threat of the use of force and damaged the credibility of both organisations in the eyes the warring parties and the world. When Bosnian Serb forces attacked the enclaves of Srebrenica, Zepa and Gorazde and shelled a market place in Sarajevo in the summer of 1995, NATO would finally get the approval to start bombing raids that were 'more than pinpricks'.[135] A large air campaign resulted, retaliating against the Bosnian Serbs and helping to create the conditions in which the Dayton Peace Agreement could be negotiated. NATO would also play a very important role in the implementation of this agreement and in preventing new flares of ethnic violence.

United Nations

The United Nations had started a peace mission in the country early on in the conflict. However, a weak mandate and unmodified equipment led to a crude inaction which would ultimately bring severe damage to the image and credibility of the UN.[136] The much cited critique of UNPROFOR being a peacekeeping mission where there was no peace to keep rather than the peace enforcement mission that was required by the circumstances was more than just. The NATO air strikes that were supposed to protect the UN forces and retaliate against breaches of the mandate by the warring parties, were blocked due to the 'dual-key system' in which UN Secretary-General Boutros-Boutros Ghali had to approve the strikes. The insufficiently armed UNPROFOR troops were an easy target for Bosnian Serb retaliation and captured UN soldiers were used as human shields.[137] This made the UN reluctant to give the necessary approval to NATO. The weakness of the UN troops became painfully visible when Bosnian Serbs took the designated safe area of Srebrenica and – under the eyes of the UN Dutchbat Soldiers – started the killing of what would be eventually 8,000 Muslim men and boys who had sought refuge near the UN post.[138]

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[133] Chollet (1997), pp. 84-85
[134] Heimerl and Van Meurs (2002)
[135] Holbrooke (1998), pp.99-106
[136] Stewart (2006), pp.754-756
[137] Daalder (2000), pp. 73-79
[138] Lapping (1995)

Why were they fighting: the issues at hand

Security

When ethnic tensions started to increase, a traditional security dilemma[139] took form. While one ethnic group took measures to protect itself, the other perceived this as threatening and felt like taking countermeasures. This increased tensions even further and an escalation of the conflict seemed unavoidable. When ethnic violence broke out, security became an even bigger issue. In the ensuing conflict, atrocities, massacres, rape, ethnic cleansing and torture would turn about half of the Bosnian population into refugees or IDP's. Forced to flee their villages and cities the IDP's searched protection and security in the territories held by their own ethnic group, while the position of those staying behind became ever more fragile. Sieges of cities created severe humanitarian crises, as food and heating were no longer freely available. Snipers were to create fear and desperation throughout Sarajevo, where death lists were believed to circulate and simply leaving the own house became a life-threatening event. But the violence was not only physical. When the simple fact of being born a Muslim, a Serb or a Croat turned someone into a legitimate target, the psychological damage was disastrous. According to a study by UNICEF, many of the children of Sarajevo were traumatised by what they witnessed during the war. Although aid programmes were developed, many of the victims will remain mentally scarred by the tragic events of the war.

Once the conflict had commenced, humanitarian concerns started to play a significant role. The brutality of the violence and the ethnic cleansing practices by all warring parties led to massive refugee flows in all directions, and the number of voluntary and forced internally displaced persons became enormous.[140] Eventually, about 2,2 million of Bosnia's approximately 4 million inhabitants would be counted as refugee or IDP.[141] Another concern were the sieges of large cities, of which Sarajevo is the most notorious example, which left the civilian population without food or heating in the long cold winters, although a huge humanitarian effort was being conducted by the UN to provide food and water where necessary.[142]

Identity

After the death of Tito, the number of Yugoslavs defining themselves as such steadily decreased while ethno-nationalism became a strong centrifugal force. The resulting identification along ethnic lines had strong psychological effects when BiH declared its independence while keeping the borders of the former Yugoslav Republic. Research showed that even before, movements of people had taken place with each ethnicity regrouping with their kin.[143] When reality suddenly put Bosnian Serbs in an independent state, separated from the bulk of

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[139] Hoddie and Hartzell (2003)
[140] Dahlman and Tuathail (2005)
[141] Tabeau and Bijak (2005)
[142] Lapping (1995)
[143] Slack and Doyon (2001)

their ethnic group and being a minority in a Muslim dominated state, they felt lost. They had no attachment with what were to be their fellow countrymen as social, ethnic, religious and cultural differences between Serbs and Muslims had a long history. They had the need to feel related to their ethnic kin with whom they used to live in the same country and feared cultural repression in an Islamic state and identity loss.[144] The same was true for the Bosnian Croats who, when Croatia declared its independence within the former Yugoslav republic of Croatia, all of sudden found themselves on the wrong side of the border. Rather than forming a state with the estranged ethnic groups of Muslims and Serbs, they preferred to join their kin in neighbouring Croatia, which would eventually lead to the 1993-1994 Muslim-Croat war.

Territorial

As soon as Republika Sprska had declared it's independence from the newly independent state of BiH, it became obvious that territoriality would play a huge part in the conflict. The territorial issue was for a large part determined on the battle field. In 1994, the Contact Group had proposed a peace plan that would give 51% of the territory to the Federation of BiH and 49% of the country to the Republika Srpska. This plan was adamantly rejected by the Bosnian Serbs, who at that time controlled 70% of the Bosnian territory.[145] However, by influencing the timing and duration of the NATO bombing raids of 1995, Holbrooke allowed for the Federation of BiH to obtain its 51% by force.[146] Once the reality reflected the percentage proposed in the plan, the Serb position had lost much of its strength.

Other territorial claims had to be decided upon at the negotiation table. First, there was the control of Gorazde and the land corridor between Sarajevo and Gorazde. Gorazde was one of the three Muslim enclaves surrounded by Republika Sprska which during the war had been declared a safe area by the UN. It is the only enclave that had not been overrun by the Serb army in the events of Summer '95. It also was claimed to be the only town in Eastern Bosnia not being ethnically cleansed by the Serbs.[147] As such it had an important symbolic and psychological value for the Muslims. Republika Srpska on the other hand insisted on unity of territory. Therefore they found the idea of a Federation of BiH enclave on their territory, as well as the corridor connecting the enclave with the Federation, painful.

The status and possession of Sarajevo was another difficult issue. In 1992, the Yugoslav National Army and the Bosnian Serb Army had surrounded the city. The siege of Sarajevo would last until October 1995. According to the 1991 census the city was made up out of 50% Muslims, 7% Croats and 33% Serbs.[148] Both the Federation of BiH as Republika Sprska claimed (part of) the city, that found itself on the frontline. Furthermore, the control over the city of Brcko was

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[144] *ibid*

[145] Lapping (1995)

[146] Holbrooke (1998)

[147] Beriker-Atiyas and Demirel-Pegg (2000), pp. 365-367

[148] See Holbrooke (1998)

considered to be of high strategic value for both parties. A former peace plan had assigned it to the Federation of BiH and the Bosnian delegation at Dayton was adamant that the terms of this – unimplemented – agreement remained valid.[149] If Brcko – that was in reality controlled by the Bosnian Serbs – went to the Federation of BiH, then the Republika Sprska would exist out of two separated parts. Eventually it was decided that the issue would be settled by arbitration one year after Dayton. [150]

Another territorial issue that was not directly connected to the Bosnian conflict, but for which a settlement was necessary if a comprehensive peace in the region was to be created, involved the question of Eastern Slavonia. This was a resource-rich Croatian area that was held by the Croatian Serbs who had claimed their independent mini-state.[151] The return of the land would eventually be agreed upon in the Dayton agreement.

Constitutional issues

A main incompatibility between the positions of the Federation of BiH and the Republika Sprska concerned the integrity of Bosnia and Herzegovina. While the Federation insisted on a sovereign and internationally recognized BiH, within the borders of the former Yugoslav Republic of BiH, Republika Sprska wanted to have its independence, and eventually form a Greater Serbia with their ethnic kin. As such, the political authorities of the state became a crucial issue in the negotiations. If the Bosnian Serbs were to live in an independent BiH, they wanted to have as much autonomy as possible. So they could only accept a weak state structure for BiH (with the possibility of the country being uncontrollable, which would support their claims for independence) and as much powers as possible for the entities, thus the Federation of BiH and the Republika Sprska.[152] The Muslims on the other hand wanted to have a strong state, making secession virtually impossible and cared less about having a powerful entity[153]. Finally the name of the state would become a sensitive issue.[154] The Federation Government insisted to have the word 'Republic' in the name and initially rejected to accept that the Serb entity be named 'Republika Sprska'. For them the word 'republic' had a strong meaning and symbolised independence. The Bosnian Serbs preferred for the same reason not to call BiH a 'Republic'. Concerning the name of their entity they indicated it was a part of their identity. 'What else should they call themselves?'

Escalation and de-escalation of the conflict: a timeline

In this section, the major events of the war will be discussed, as well as their impact on the escalation and de-escalation of the war. In fact, during the Bosnian war, three separate conflicts manifested themselves, although the distinction was

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[149] Beriker-Atiyas and Demirel-Pegg (2000), p. 368
[150] *General Framework Agreement for Peace*
[151] Beriker-Atiyas and Demirel-Pegg (2000), pp. 367-368
[152] *ibid*, pp. 368-371
[153] Chollet (1997)
[154] Beriker-Atiyas and Demirel-Pegg (2000), p. 371

blurred and is difficult to make.[155] Below, we will try to look at the nature of these three conflicts and analyze their development and settlement.

As indicated before, the war in Bosnia started after the country had declared its independence, in March 1992. An early attempt by the international community to prevent the war in 1991 – with the Cutilairo-Carrington plan – had been doomed when the Bosnian President Izetbegovic withdrew his support for it.[156] The conflict that then erupted was that between the Republika Srpska (supported by Serbia) and the government of BiH (supported by Croatia). The casus belli was a fundamental disagreement about the integrity of the new Bosnian state, as the Serb Republic intended to stay within the Yugoslav federation, contrary to the government of BiH. Immediately after the beginning of the war, the Serb Republic displayed an overwhelming power compared to that of the Bosnian government. The newly created country did not yet had a trained and equipped army, nor did it possess heavy artillery or other war-suited weapons.[157] Furthermore, the international arms embargo against the former Yugoslavia prevented them from acquiring such military means. Republika Srpska on the other hand received military support and weapons from the Yugoslav army.[158] This situation would last for approximately four years, while peace plans and mediation attempts would fail due to the intransigence of the seemingly victorious Republika Srpska. In the summer of 1995, the fall of the UN-designated safe areas of Srebrenica and Zepa, and the shelling of a market place in the besieged Sarajevo would alter the situation on the battlefield dramatically. A NATO bombing campaign against the positions of the Republika Srpska in combination with a new Croatian offensive left the Bosnian Serb army in disarray. Bosnian advances regained the Federation 51% of the territory, the percentage proposed in the previous peace plans.[159] This created a window of opportunity for the simultaneous US diplomatic initiative to bring all parties to the negotiation table. The conflict with the Republika Srpska would eventually be settled in December 1995, when an agreement was reached in the Dayton negotiations. This however, would not be the only conflict that was fought in the Bosnia war.

In late 1992 and early 1993, a second conflict would manifest itself and increase the intensity of the war, when the Croatian Republic of Herzeg-Bosnia was created and its independence declared.[160] In some places tensions had risen as partition plans brought up the question of who would control the areas not under Serb control, the Muslim-dominated government of BiH or the Croatian Republic of Herzeg-Bosnia? Deemed unconstitutional by the Bosnian government, the secessionist Croatian Republic soon started fighting the Bosnian army for land. Yet, in some Bosnian areas unity still prevailed, for example, in the case of the Bihac and the Posavina areas, places were both groups were seriously

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[155] 'Mediterranean – Bosnia Herzegovina' in *Uppsala Conflict Database*, o.c.
[156] Kumar (1997)*,* pp. 51-53
[157] Lapping (1995)
[158] *ibid*
[159] *ibid*
[160] 'Mediterranean – Bosnia Herzegovina' in *Uppsala Conflict Database*, o.c.

outmatched by the Bosnian Serbs on the side of Republika Srpska.[161] In February 1994, under US pressure, a cease-fire was signed and the 'Federation of BiH', containing all the areas under Muslim and/or Croat control, was installed. However, for a while this Federation did not include the Autonomous Province of Western Bosnia, with whom a third conflict had erupted in 1993.

In 1993, the Muslim and Croat leaders had been willing to agree on the Vance-Owen plan which basically was a partition plan for BiH.[162] The plan was eventually rejected by Republika Srpska, who would have voluntarily had to give up much of the land it had conquered. For this, it gained almost nothing in return except recognition. The plan led to a strong reaction by Fikret Abdic, who established the Autonomous Province of Western Bosnia in the area around Bihac. This 'Autonomous Province' then refused ethnic partitioning on its territory and claimed the same status as given to the other two entities, the Republika Srpska and that what later would become the Federation of BiH. Supported by Bosnian and Croatian Serbs, but strongly opposed by Muslims and Croats, it suffered military defeat in 1995 and had to yield.[163]

Below, you will find a graph indicating the estimated evolution of battle deaths per year by conflict throughout the war. The estimates are based on the Uppsala conflict database. However, these estimates do not include civilian war-related deaths.

Furthermore, due to a lack of accurate information, the Uppsala conflict database works with broad intervals in the estimated battle deaths. For this graph, we worked with the average value, rather than relying on either the high or the low estimate. According to Tabeau and Bijak[164] the number of total war-related deaths can be estimated as 102,622 individuals of which 47,360 (46%) are military victims and 55,261 (54%) are civilian war-related deaths.

Refugee statistics too suffer from a lack of accurate information. Below you will find a graph based on the UNHCR estimates at the beginning and the end of the war.[165] Remarkably, the number of refugees and IDP's did not significantly increase later on in the war. Early on after fighting erupted, almost half of the Bosnian population was on the run. The return of the many refugees and IDP's would later appear to be extremely complex and proceeded very slowly.

[161] *ibid*
[162] Kumar (1997), pp. 50-71
[163] 'Mediterranean – Bosnia Herzegovina' in *Uppsala Conflict Database*, o.c.
[164] Tabeau and Bijak (2005)
[165] *ibid*

Estimated battle deaths in Bosnia civil war
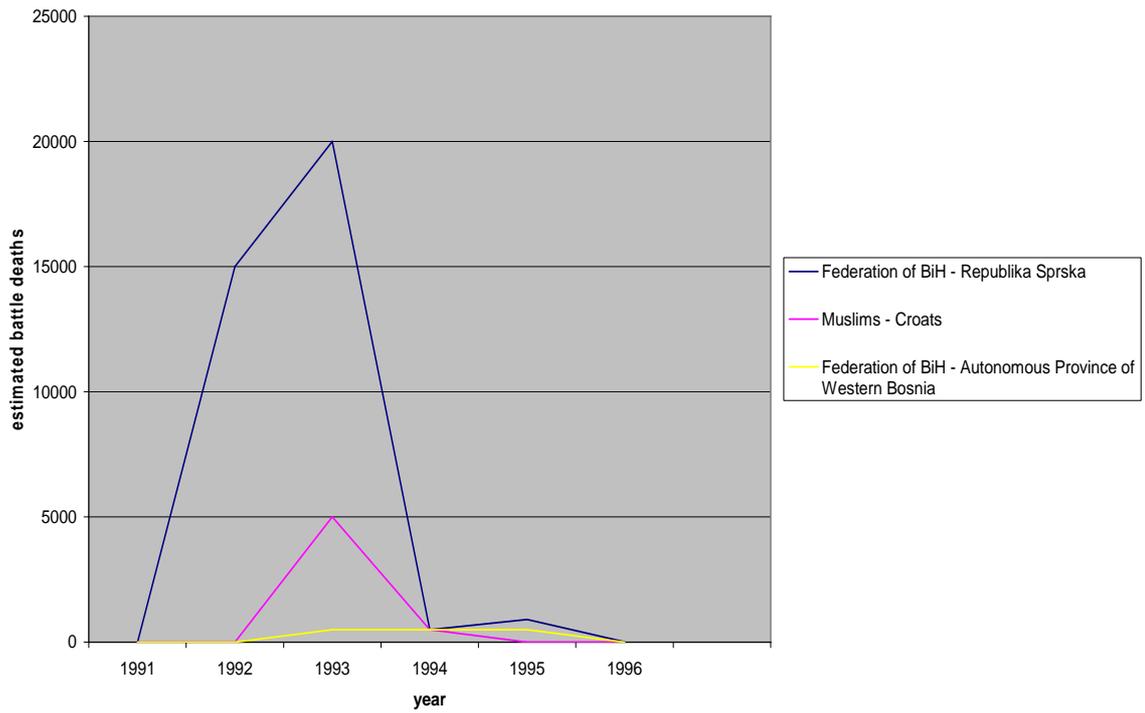
Figure 1: Estimated battle deaths in the 1992-1995 Bosnia war

Refugees and internally displaced persons from BiH according to UNHCR estimates
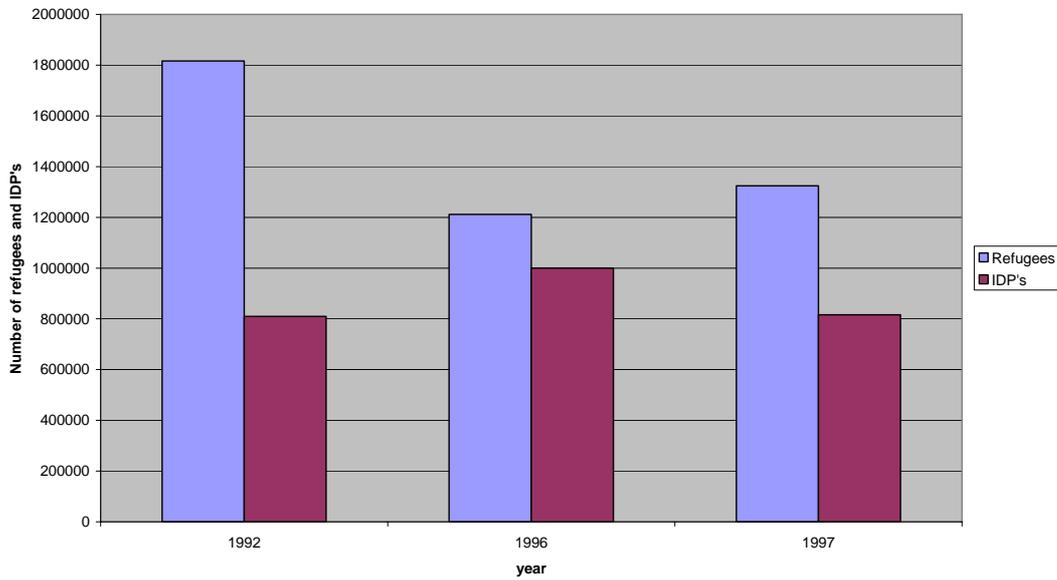
Figure 2: Estimate of refugees and IDP's of the 1992-1995 Bosnia war

Visual Representation of the Conflict Mapping and the Conflict Analysis

Most important conflict parties in the Bosnia War and their relationships. Representing the situation in the summer of 1995, when the US diplomatic offensive started.
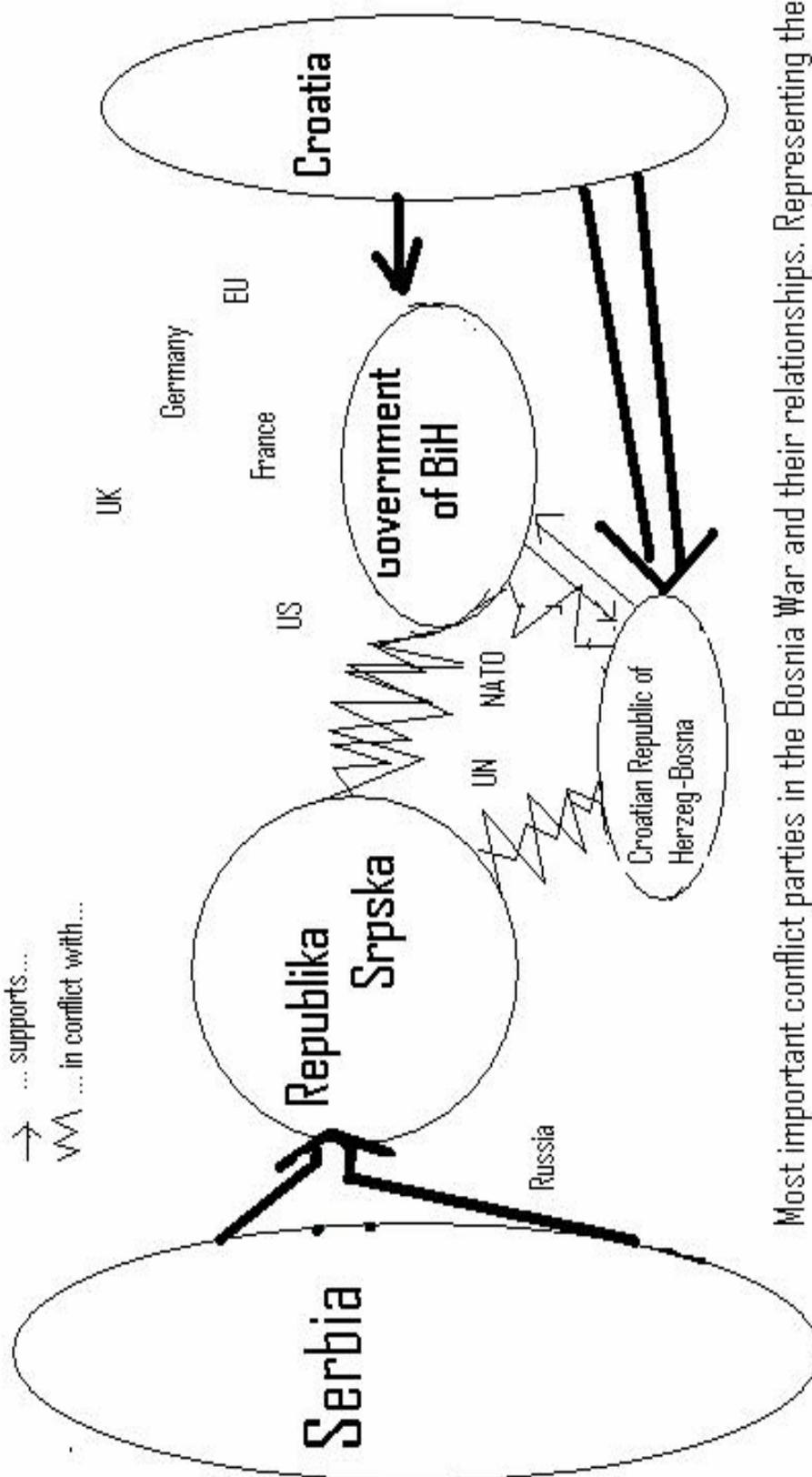
Figure 3: Conflict Mapping for the 1992-1995 Bosnia war. Situation as of summer'95

Issues \ Parties	Federation of Bosnia and Herzegovina	Croatian Republic of Herzeg-Bosnia	Republika Srpska
Identity	Muslims as part of Bosnian nation comprising all three ethnic groups	Croatian Catholic Great Croatia: one nation with Croatian kin	Serbian Orthodox Great Serbia: one nation with Serbian kin
Security	Safety from ethnic cleansing by and ethnic violence in general Secure access to food, drink water, heating in besieged cities	Safety from war, ethnic cleansing and ethnic violence in general	Safety from Muslim-dominated Bosnia and ethnic violence
Territoriality	Independent Bosnia keeping the borders it had in the former Yugoslavia	Croatian-inhabited territory joining Croatia	Serb-inhabited territory joining either Serbia or becoming independent
Constitutionality	Independent single-state Bosnia and Herzegovina Direct elections	Independent/irredentist Croatian Republic of Herzeg-Bosnia /	Independent/irredentist Republika Srpska Indirect elections

Table 5: Conflict matrix for the 1992-1995 Bosnia war

B. Difficulty of the conflict

How problematic a conflict resolution process shall be partially depends on the degree of difficulty of a conflict. It is a fact that some conflicts are conditioned in a way as to facilitate resolution. Others prove more difficult to settle. Several factors can determine the degree of difficulty of a conflict. We distinguish the following: the parties involved; the issues at stake; the approach taken towards handling the conflict; the internal opportunity structure of the conflict and the history of the conflicting parties, their relationship and the conflict itself; the internal commitment towards settlement; and the external support and commitment towards resolution. In what follows, we will analyze the degree of difficulty of the Bosnian conflict in the summer of 1995, when the events took place that would lead up to the American diplomatic offensive resulting in the DPA.

The parties

<u>Number of parties involved</u>

Ideally, a conflict has only two opposing parties. If the number of parties in a conflict is more than two, then the degree of difficulty increases with the number of parties.[166] At the very beginning of the Bosnian war only two parties were opposing one another, the Republika Srpska and the Government of BiH. However, a third important party later emerged in the form of the Croatian Republic of Herzeg-Bosna. A fourth and much smaller party became the self-declared Autonomous Province of Western Bosnia. Moreover, the role of Serbia and Croatia in supporting their respective clients was not to be underestimated. When the Dayton negotiations finally commenced, the number of parties had again been limited to three. The Muslim-Croat Federation of BiH, Croatia and a mixed Yugoslav-Republika Srpska delegation were the only ones to negotiate a peace for future Bosnia.[167] Although this indicates a more complex situation than would exist in the ideal scenario where only two parties are involved, the number of warring parties still was quite limited.

<u>Extremism of the parties</u>

Nevertheless, difficulty increased with the complex asymmetries regarding support and foreign aid. Furthermore, the power was in the hands of extreme nationalist factions, with the leadership being rather undemocratic and – especially in the case of the Bosnian Serbs – internally repressive. The radicalism and intransigence of the parties is influential: if extremists are included in the peace process, then they might cause the negotiations to fail, but if they are excluded, then the potentiality of spoilers trying to wreck the peace agreement increases[168]. Lastly, a great number of soldiers would lose both job and income if a peace agreement was signed, and the presence of possibly uncontrollable irregular forces – mostly on the Muslim side – increased the likelihood of spoilers.[169]

The issues at stake

The ethnic conflict in BiH was mainly an identity conflict. The issues at stake were related to safety, kinship, feelings of belonging, self-rule, etc. Identity conflicts are believed to be more difficult to resolve than resource-conflict.[170] A belief that seems justified in the case of Bosnia and Herzegovina. The ethnic nature of the conflict polarised the Bosnian society in camps where there was hardly any room left for neutrality. Moreover, there were many vital issues at stake for the parties involved, which increased their will to fight. When ethnic cleansing commenced, Bosnian Muslims were not only fighting for stretches of

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[166] Downs and Stedman (2002), pp. 55-56
[167] Holbrooke (1998)
[168] Abdallah (2001), pp. 159-161
[169] See Holbrooke (1998)
[170] Rothman, (1997), pp. 2-35

land or not even for a certain state structure, but for their very right to exist, so it seemed. Bosnian Serbs may have been driven less by the physical survival issue – only incurring major losses at the end of the war – but they feared the demographic trends that turned them into an increasingly small minority in the new country of BiH.[171] The Muslim rejection of the pre-war plan that guaranteed a level of protection for the minorities created doubts about the intentions of the Muslim majority that wanted to control the country in respect of their demographic weight.[172] If not the physical survival of the Bosnian Serbs, then at least their culture, their sense of identity and self-respect, and their autonomy seemed threatened by the developments in Yugoslavia. These mutual fears led to a conflict with an even deeper dimension than that a mere resource conflict would have.

With regard to the competing/common nature of the issues at stake, most issues were of a rather competing nature and the parties' aims mutually exclusive. While Republika Srpska pursued separatism, the Muslims within the Federation of BiH wanted a unitary state.[173] The compromise of a federal state where the federated entities had a high level of autonomy, was considered more as a 'lose-lose' situation, than as a 'win some, lose some'-deal and left both parties unsatisfied. Nevertheless there were issues for which both parties' aims could be reached. What added even further to the complexity of the conflict was that some leaders – such as Karadzic – exploited the conflict for profit, for example, by conducting large smuggling operations.[174] Those leaders had more to gain from a continuation of the war and the enduring instability of BiH, than from peace. As a result, they demonstrated a less accommodating attitude throughout the negotiations than would be the case if leaders had a sincere desire for peace.

The approach taken towards the conflict

In the summer of 1995 both the Federation of BiH as the Republika Srpska believed in their chances of victory. The long-time overwhelming Serbian force had suffered greatly under the NATO bombing raids and the latest Croatian offensive had left the Bosnian Serb Army in disarray.[175] For the first time since the start of the war, the odds seemed to be in favour of the government of BiH. Nevertheless, the Bosnian Serb Army had started to regroup and if the West would cease its intervention, everything would be possible again.[176] This created a situation where only high levels of endured pressure could ensure the parties' entered into peace negotiations, as there was no critical amount of peace building leadership present and the incumbent leaders –believing in their chances of victory – were unwilling to take an accommodating approach towards the

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[171] Slack and Doyon (2001)

[172] Kumar (1997), pp. 51-53

[173] Beriker-Atiyas and Demirel-Pegg (2000), pp. 367-371

[174] Chollet (1997), pp. 75-99

[175] *ibid*, pp. 75-99

[176] *ibid*

conflict. Pressure would also be required to keep the negotiations on track, to reach a final agreement, and to enforce the implementation of that agreement.[177] In a reverse situation, where both parties believed that the continued fighting would bring unacceptable costs and/or lead to defeat[178], the willingness to negotiate would have been higher, the parties would likely have shown a more accommodating attitude and less external pressure would have been necessary to impose a peace on the parties.

Internal opportunity structure

It is often said that democracies are less likely to resort to violence as aggrieved parties can obtain concessions from politicians accountable to them through democratic mechanisms.[179] When BiH declared its independence, the problem was that no power-sharing arrangements were present to ensure the sufficient representation of all ethnic groups.[180] This created a situation in which Bosnian Serb interests could be overruled by Muslim and Croat votes, one of the reasons why independence seemed so horrific to the Bosnian Serbs. Maybe the war could have been averted if the government of BiH had accepted the early Cutileiro-Carrington plan.[181] It is not unthinkable that if an agreement had been forged between the three main ethnic groups to ensure the rights of minority groups and if acceptable power-sharing arrangements had been negotiated before the independence was declared; the course of history would have been quite different. The absence of such power-sharing mechanisms and conflict-regulating arrangements definitely did not help the new state on its way to stability. This was worsened by the war-oriented journalism on the Yugoslavian and Bosnian television. As the media were largely state-controlled, they were used for propaganda more than for objective reporting on the conflict.[182]

Another structural factor that is related to the outbreak of violence and war is the economic level of country.[183] Countries with a high economic level are less likely to resort to violence than countries with a low economic level. Reasons for this are twofold; on the one hand rich countries can invest more in peace building measures than poor countries can. On the other hand, extremely poor people may be an easier prey for extremism and radicalisation. BiH was one of poorest republics of Yugoslavia when it declared its independence, and its economic level was low. Without humanitarian aid and international economic and financial support, the competition for jobs, food and housing and the tensions it created would make it extremely difficult to pacify the country.[184]

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[177] Downs and Stedman (2002), p. 56
[178] Also referred to as the presence of a mutually hurting stalemate
[179] Gurr, Marshall and Khosla (2001), pp. 22-25
[180] Kumar (1997), pp. 51-53
[181] *ibid*, pp. 51-53
[182] Jusic, *Media Landscape. Bosnia-Herzegovina*
[183] Alexander and Harding (2005)
[184] Slack and Doyon (2001)

Finally, the absence of the rule of law made Bosnia a smugglers paradise where profitable arms and drugs trade and human trafficking allowing them profiteer. The criminal organisations that made money out of the war and out of the continuing instability had connections up to the leadership of the opposing parties – for example, Karadzic – which resulted in a decreased commitment to peace and a heightened potential for spoilers to emerge. [185]

History of the parties and the conflict

If the history of Bosnia was to be used to predict its future, then the account of what to expect was mixed. On the one hand, the ethnic groups had been living together peacefully for many decades and the level of intermarriages was relatively high, especially in Sarajevo.[186] On the other hand, BiH had never been an independent state and as a consequence the new state could not refer to 'a special common history' of its inhabitants. And while nationalists gained power and radicalism increased, the violent memories of the Second World War were revived in the minds of Bosnians. The confrontation between Croatian Catholic Ustasha's supporting the German Nazi regime and the Serbian Orthodox Chechniks opposing Nazism had been brutal.[187] Concerning the Bosnian Muslims, a long era of Turkish (Ottoman) domination after the lost battle of the Kosovo Field, and clashes in the Second World War became vivid memories within the Serbian nationalism and fuelled hatred towards this ethnic group.[188] In fact, the more radicalisation that took place, the more the recent account of their peoples living together peacefully was forgotten and the more ancient tensions and hatreds would come to the front stage.

The 1995 conflict indeed became a highly destructive and deadly conflict that went on for quite a long time. The number of refugees and displaced persons would be up to over 2 million, about half of the Bosnian population.[189] The psychological impact was large and it would/will take time to deal with the memories and the hatred before the two parties can live together again in trust and harmony. Damage and suffering, however were not equally spread. In general, the Muslims suffered the most throughout the Bosnia war, being the victims of ethnic cleansing of both Serb and Croat forces. The Serbs are usually seen as the aggressive party that started the war, caused most damage and suffered the least.[190] In the summer of 1995, parties still believed in their chances of victory, with levels of war weariness being relatively low within the leadership. All of this increased the difficulty of the conflict. The negotiations that would take place in the following months did not happen voluntarily, rather

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[185] British Broadcasting Corporation (1997)
[186] Lapping (1995)
[187] *ibid*
[188] *ibid*
[189] Tabeau and Bijak (2005)
[190] Lapping (1995)

under the pressure of NATO bombardments, economic sanctions and other carrots and sticks.

Internal commitment to peace

The internal commitment to peace had been rather low within the leadership of the parties. Both the government of BiH and the leadership of Republika Srpska believed they could achieve their goals by holding firm and so the Cutileiro-Carrington plan was buried by the government of BiH despite holding the promise of stability and war prevention.[191] As such, Republika Srpska did not fear engaging in large-scale violence when responding to what was perceived as 'Muslim threats'.[192] The result of the leadership's intransigence is well-known by now. If the commitment to peace had been larger, the war could have been avoided. In the summer of 1995, little had changed. The will to fight remained high for both parties. The Muslims savoured the victories of the Croatian-supported manoeuvres and the Serb forces were not defeated yet. On the battlefield, all options were open again.[193] Although many citizens wanted peace, radicalisation and hatred were widespread. Without external intervention, there would not have been a window of opportunity for conflict resolution when there was. The internal commitment to peace was insufficient for this.

External commitment and support

Bosnia found itself in a very bad neighbourhood when the conflict erupted. Today, it still does when it tries to become a stable and viable state firmly on the road to sustainable peace. The instability of the Western Balkans, where since the early 1990's the one ethnic conflict after the other erupted appears contagious and every conflict may have repercussions for the ethnic relations within neighbouring countries.[194] The disintegration of Yugoslavia had started in Kosovo. When Serbian Kosovars claimed that had been attacked by their Albanian Kosovar counterparts, Serbia intervened and the autonomy of the region was taken away. Slovenia could not reconcile itself with the consequences of such a move, as Serbia now controlled half of the votes in the Yugoslav federation. No one tried to accommodate their grievances, except for Croatia who sympathized with the Slovenian point of view. When Slovenia declared its independence, Croatia followed, for a Yugoslavia without Slovenia gave too much power to the Serbs. The Serbian minority of Croatia subsequently declared its own mini-state in the Croatian Krajina. With Slovenia and Croatia gone, Bosnian Muslims began favouring independence as their position within the Yugoslav federation became too fragile. Within Bosnia then, the Bosnian Serbs and Bosnian Croats strived for independence. Had the Yugoslav region been a stable, peaceful one, it might not have come to ethnic warfare within Bosnia. The

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[191] Kumar (1997), pp. 51-53
[192] Slack and Doyon (2001)
[193] Chollet (1997), pp. 75-99
[194] Lapping (1995)

instability of the region however, seemed to steer the country into the direction of violence and ethnic warfare. Today, we can still speak of a bad neighbourhood for the Bosnian peace process, although continued international presence and ongoing peace processes start to bear fruit. In 1999, war returned to Kosovo where Albanian Serbs and Kosovars opposed one another over the question of the loss of regional autonomy, the question which earlier had began the disintegration of Yugoslavia. This time, the international community was faster to respond, but still could not prevent the instability to bring neighbouring FYROM on the verge of a civil war.[195] In 2006, Montenegro declared its independence and today, the recent declaration of independence by Kosovo is once again increasing tensions in the region.

In such a neighbourhood, it is all the more important that other international actors counterbalance the negative impact by committing themselves to create peace in the Balkans.[196] The NATO and later EU military interventions had the means to end the fighting. But for creating a stable and viable Bosnian state that no longer required such military assistance, more was necessary. A civilian peace building and nation-building process had to be supported. The Office of the High Representative was created to oversee such civilian implementation aspects of the DPA.[197] Furthermore, the EU tries to convince Bosnia to move forward on the track to become a peaceful, stable and democratic state by holding up the carrot of EU membership. Yet, even today, stability within Bosnia is not guaranteed. If the international community leaves now, it is uncertain how the recent developments in Kosovo will affect BiH. Some ethnic groups might not understand why Bosnia has to remain a single-state, now that Kosovo declared its independence. A strong international presence, not only in BiH but in the entire region remains desirable as long as such risks exist.

There are few conflicting parties.		🟩				There are many conflicting parties.
The leadership is moderate				🟧		The leadership is extremist
The conflict is about resources (land, energy, water)					🟥	The conflict is deep-rooted (identity conflict)
The conflict is embedded in a peace-enhancing environment				🟧		The conflict is embedded in a undemocratic environment, where conflict-regulating mechanisms are absent and rule of law is not upheld

[195] International Crisis Group (2001), pp. 1-5
[196] Downs and Stedman (2002), pp. 58-61
[197] cf. infra

The media is having a positive influence on the conflict						The media is having a negative influence on the conflict
The conflict is of short-duration and made relatively few victims.						The conflict is going on since a long time and made many victims.
The conflict is very symmetric						The conflict is very asymmetric
Internal commitment to peace is high						Internal commitment to peace is low
External commitment to and support for peace is high						External commitment to and support for peace is low
The conflict takes place in a good neighbourhood						The conflict takes place in a bad neighbourhood

Table 6: Visual Representation: Difficulty of the Conflict

C. Making peace at Dayton

1. Evaluation of the negotiation process

Inclusive-Exclusive Peace Process

Inclusiveness can be viewed upon at two levels: (1) in a horizontal perspective it implies the participation of all warring parties[198] and (2) in a more vertical way it takes into account the representation of civil society (grassroots) and mid-level actors, next to political and/or military leaders.[199]

In its first sense, the Dayton peace negotiations seemed to be a rather inclusive event, as the political leaders of all of the warring parties – except for Radovan Karadzic – were present. At second glance, however, it appears that the inclusiveness of the process was merely a farce. While the Serbs, Croats and Muslims were equally included in the process, this representation along ethnic lines disguised the limited impact the Republika Srpska – and also the Bosnian Croat nationalists[200] - could have on the negotiations due to the mixed-delegation arrangement. Practically, the Serb Republic was included only in discussions over the map, and their intransigence quickly led them to be excluded even there.[201]

The vertical inclusiveness of the process then was even less than the horizontal one. No grassroot or mid-level actors were included in the negotiations. Not only did they not participate, but as the peace talks took place in far-away Dayton and

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[198] Abdallah (2001), p. 159
[199] Lederach (1996), pp. 47-70
[200] Tudjman had a great influence on the Bosnian Croat nationalist as they were dependent on him for support.
[201] Holbrooke (1998), pp. 254-256

as negotiators were not allowed to discuss the progress of the talks in the media, the Bosnian civil society simply had no clue of what was being discussed and what was being agreed upon until the General Framework Agreement for Peace had been approved. Only with regard to the Eastern Slavonia question a second negotiation track was opened and the main local actors were asked to participate.[202] However, the lack of progress led to a quick close of this second track and the negotiations were further handled at Dayton.

The relative exclusive nature of the Dayton peace negotiations had a somewhat ambiguous impact on the outcome of the peace process. On the one hand, the secrecy of the talks allowed the contending leaders to reach an agreement without being confronted with unhappy constituencies feeling they had been 'sold out'. This facilitated the concession-making of the parties. Furthermore, the partial exclusion of the Serb Republic might have been a necessary prerequisite for reaching any agreement at all. While it is in the interest of the peace process to have all warring parties – even radicals – involved, this is only the case if those parties are genuinely interested in reaching a negotiated peace.[203] The Serb Republic was literally 'bombed to the negotiation table' and their highly intransigent attitude could have seriously hampered – or simply impeded – the talks. On the other hand, many Bosnians – Muslim, Croat or Serb – felt the peace that was created at Dayton to be a 'Pax Americana'.[204] An agreement forged in a foreign place, under foreign pressure and largely guaranteed and implemented by foreigners. This definitively had an impact on the faltering implementation process, with the DPA being contested first mainly by the Bosnian Serbs and some Bosnian Croats, and later even more so by the Bosnian Muslims.

Negotiator Authority

Essential throughout negotiations is that the negotiators possess enough authority to represent the constituencies that will be bound by the agreement. Many peace agreements failed exactly because those at the negotiation table could not control those on the battlefield. Before agreeing to host the peace talks at Dayton, the US delegation demanded that all delegations present would have the authority to sign the agreement without ratification – parliamentary or other – to be required.[205] At Dayton, all main political leaders were present, except for Karadzic who was not allowed to enter the US. Indeed, it would be hard for anyone to make the case that Tudjman, Izetbegovic and Milosevic did not have the authority to speak for their respective countries. However, the question can be asked if Milosevic had the authority to conclude the agreement on behalf of the Serb Republic.[206]

It is true that the Republika Srpska had delegated to Milosevic the authority to negotiate a peace agreement in their name. Furthermore, three political tenors of

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[202] Chollet (1997), pp. 189-192

[203] Abdallah (2001), p.159

[204] Lapping (1995)

[205] Abdallah (2001), pp. 199-200

[206] Stewart (2006), pp. 756-757

the Republika were part of the Serb delegation. Yet, those Bosnian Serb delegation members were not consulted, and even hardly informed about the discussions and the progress at Dayton. In fact, they had seen the map agreement only on the closing day of Dayton and seeing what concessions were made, they refused to initial the agreement. Therefore, Milosevic initialled in their place, an act to which he was not legally authorised: negotiating an agreement does not mean that one can actually conclude an agreement. This problem was solved when two days later Milosevic got the required Republika Srpska signatures, something he had promised the US. While this made the agreement a legal document, the Bosnian Serb true rejection of the agreement became clear in the words of the President of the Republika Srpska, Radovan Karadzic, saying that 'Bosnia would bleed for decades'[207] unless the Dayton terms were changed. While Milosevic may have been able to pressure Republika Srpska into initialling the agreement, getting them to actually support the document they had signed would prove to be much more difficult.

Symmetric – Asymmetric Power Relations

Throughout the war, power relations were very asymmetric and beneficial towards the Serbs. Although demographically the Muslims were outnumbering them – especially when they aligned with the Croats – this demographic advantage was not reflected in the military or territorial domain. According to the population estimates of the 1991 census, about 44% of the Bosnian population designated themselves as being Muslim, 39% as being Serb, and 17% as being Croat.[208] Furthermore, the Muslim population had been increasing, while the Serb demographic numbers stagnated. [209]

Despite their demographic disadvantage, the Serb Republic possessed overwhelming military power, when compared to the Muslim-supported government of BiH.[210] Heavily supported by Serbian paramilitaries, the 'Red Barets' and – in the beginning of the war – by the Yugoslav army, they conquered about 70% of the Bosnian territory and beleaguered Sarajevo. This situation was not about to change rapidly: while the Serb Republic saw a steady flow of weapons arriving from Serbia, the Bosnian government suffered from the international weapons embargo against Yugoslavia, preventing them to arm themselves.

However, by the end of 1995, power relations altered dramatically and a more symmetric stage emerged. The successful Croat / Federation of BiH offensives combined with extensive NATO bombing campaigns brought the areas controlled by the warring parties close to a 51-49 percent division. The painful economic sanctions against Serbia finally started to convince Milosovic that a quick negotiated agreement was required, leading him to reconsider military

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[207] Holbrooke (1998), p.318
[208] Markusen and Mennecke (2004), pp. 72-85
[209] Slack and Doyon (2001)
[210] Lapping (1995)

support for the Republika Srpska. For the first time since the war had started, Bosnian Serbs were confronted with the idea that they might not 'win' this war and that refusing to negotiate could create a worse outcome – military defeat – than would negotiating. As such, the conflict had 'ripened' and a window of opportunity was created in which peace talks could commence.[211]

When one looks at the negotiation process itself, power relations look quite different however. While all three delegations (Bosnian, Yugoslav / Serb Republic and Croatian) were treated more or less equally, the composition of the delegations effectively prevented the Bosnian Serbs from greatly influencing the negotiations.[212] Previously, the US had demanded that Bosnian Serbs accepted Milosevic to negotiate for them, who did little to consult or even inform his Republika Srpska delegation members. The Bosnian government who represented itself, , was not hampered by such a condition when defending its interests. That Milosevic had other incentives throughout the Dayton peace talks than just the well-being and the interests of his Bosnian Serb kin became clear when he unnecessarily gave up the whole of Sarajevo. This move was believed to weaken the Pale government.[213] The mixed-delegation arrangement might have helped to reach an agreement, the lack of Bosnian Serb input in the negotiation process made that agreement look like a foreign solution to which Republika Srpska was willing to abide only when effective enforcement measures were taken.

Constructiveness of the relationship and cost-effectiveness of the process

Even before the Bosnian war had started, peace talks were held and agreements were negotiated.[214] Unfortunately, all of those diplomatic efforts failed. The Lord Carrington peace plan, the Vance-Owen peace plan, the efforts of the European negotiator Carl Bildt; all were unsuccessful in finding a solution that the warring parties could accept. Yet, out of those failed attempts the basis could be extracted of what would become the Dayton Peace Agreement.

The US diplomatic offensive that would lead up to the Dayton negotiations began in august 1995, after the fall of Srebrenica and Zepa earlier in July.[215] By that time, the war was in its fourth year and the destruction and human toll were enormous, with over half of the Bosnians being either refugee or IDP. Throughout the next 2-3 months five shuttle rounds would clear the way to Dayton. The shuttle diplomacy also resulted in an agreement lifting the siege of

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[211] Chollet (1997), pp. 75-99
[212] Holbrooke (1998) and Chollet (1997)
[213] Holbrooke (1998), pp. 291-293
[214] Kumar (1997), pp.38-71
[215] Daalder (2000), pp. 61-71

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Sarajevo which was signed on September 14[216], and in a general cease-fire agreement signed on October 5 and taking effect on October 12.[217]

Given the longevity and the ferocity of the Bosnian conflict, one could argue that Holbrooke's team reached significant progress in little time. J. Rothman[218] indicates that the existence of an adversarial relationship throughout a negotiation can be detrimental in identity conflicts. One reason for this is that the competitive behaviour that goes with it tends to lead to a form of distributive bargaining, while none can be asked to compromise on his identity, security and/or dignity. This problem posed itself quite clearly at the Dayton peace talks. While the Bosnian civil war was unmistakably an ethnic and identity conflict, years of ferocious warfare and acts of ethnic cleansing had radicalised the already nationalist leaders. Relations then were highly adversarial, not to say hostile. To prevent adversity and interpersonal dislike from hampering the peace process, the Dayton negotiations were held in the form of 'proximity talks'. This allowed proposals and positions to be exchanged faster by the shuttle team, than was the case when it had to fly between Zagreb, Sarajevo and Belgrade. Yet, on some occasions, direct negotiations – whether with or without the presence of a mediator – did take place.[219] Results were mixed.

On the one hand, Holbrooke tells of how the three presidents seem to enjoy each other's company at some points. On the other hand, he speaks of the occasional shouting matches, the avoidance and the tense atmosphere lingering over the talks. The transformation of adversarial relations to more constructive ones in the quest of a real problem-solving solution had only partially succeeded. While Tudjman and Milosevic managed to reach workable agreements among themselves, at a certain moment even choosing for direct negotiations without mediator presence, the Bosnian-Serb relationship remained tense. This is not surprising given the wartime events on the battlefield. Yet, it almost led to the failure of the entire Dayton peace talks, when the 49-51 territorial division resulted in the reopening of the question of Brcko-ownership on the last day of the negotiations.[220] Only strong US pressure managed to forge an agreement, a pressure that would have to be maintained in the implementation process, if the DPA was not to be doomed.

One of the explaining factors for Holbrooke's success can be found in the concept of 'conflict ripeness'.[221] While the Bosnian Serbs had appeared to be on the winning side ever since the conflict erupted, the NATO air campaign that had been launched in response to the shelling of a Sarajevo market place in August changed the power structure of the conflict dramatically. The already successful Croatian offensive gained in speed as the Serb troops suffered heavily from the

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[216] Chollet (1997), pp. 33-35

[217] *ibid*, pp. 143-148

[218] Rothman (1997), pp. 5-32

[219] See Holbrooke (1998)

[220] Holbrooke (1998), pp. 301-312

[221] Walter (2002), pp. 8-11

bombardments. The Croat-Federation army soon controlled about 50% of the territory, which equalled the territorial division previously sought by the Vance-Owen peace plan.[222] Further defeat would leave the Serb Republic worse off than the envisioned peace negotiations. On the other hand, the Croat-Federation advances seemed to have come to an end. If the Republika Srpska managed to reorganize its army then for the Bosnian government too, the continuation of the armed conflict could lead to a less favourable outcome than peace talks would. This unique situation created a window of opportunity for conflict resolution. However, for this opportunity window to be maintained the continuous bombarding of Bosnian Serb positions by NATO - or the threat of a quick resumption of the bombardments – was essential.

The negotiations at Dayton themselves took about 20 days, which was a bit longer than anticipated.[223] Yet, the cost of the delay was limited: humanitarian aid was able to reach Sarajevo and a cease-fire was in place. A remaining humanitarian concern was the faltering restoration of gas- and oil-supplies to both Bosnia and Serbia, where the harsh winter had already commenced. Furthermore, the painful economic sanctions against Serbia were not to be lifted before the initialling of an agreement.[224]

Endogenous – Exogenous process

The endogeneity of peace negotiations refers to the level to which the conflicting parties themselves are steering and controlling the negotiation process.[225] With regard to the Dayton peace talks, that negotiation process was mostly an exogenous event. The pre-negotiations had started when the US decided to launch a diplomatic offensive. The compliance of the Serb Republic had later been assured by an extensive bombing campaign and Serbian engagement was obtained mostly thanks to the international economic sanctions. The timing of the 'shuttles', where they went, and what they discussed was largely controlled by Holbrooke's team. The US delegation pushed the Serbs to agree on lifting the Sarajevo siege, pressured the Muslims to sign a cease-fire and chose the location and moment of the proximity talks. And at Dayton too, the process remained largely determined by the US negotiation team. The draft agreements, the location, the shape of the negotiation table, the timing, visits of senior officials, the issues that were to be tackled and the ones that were not, and even the composition of the delegations had in a more or less significant way been influenced by Holbrooke[226] himself.

The exogenous character of a negotiation process is often feared to 'disown' the parties of their conflict.[227] Feeling that they have lost control over the events and

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[222] Lapping (1995)

[223] Holbrooke (1998) p. 251

[224] Chollet (1997), pp. 198-201

[225] Simonelli (2006)

[226] See Holbrooke (1998) and Chollet (1997)

[227] Abdallah (2001), pp. 158-159

the evolution of the peace process, warring parties might become weary of the negotiations and abandon the peace talks, continuing the search for a solution on the battle field. Or, they might lack a sense of responsibility. In Bosnia, however, it might have been essential that the mediator steered the process with a firm hand. Republika Srpska attended mainly because of the sticks (economic sanctions and bombardments) that were used and was very uncompromising. The Bosnian Muslims who were internally divided and rather unprepared seemed to be hardly capable of presenting a common stance on the issues discussed.[228] The Croats had their priority in regaining Eastern Slavonia, which they also believed to be an attainable military goal and cared less about the Bosnian question.[229] This was highlighted by Tudjmans repeated absence from the Dayton compound. Leaving the peace process at the goodwill of the three contending parties, then seemed to be a recipe for failure.

Elicitive - Prescriptive Approach

Holbrooke's first shuttle was intended to gather information on the parties' positions, their desired outcomes and potentially acceptable solutions, as well as to define some basic principles on which they all agreed. As such, the initial stage of the process might be considered to have been relatively elicitive. However, from that moment on the negotiation process would receive a largely prescriptive character, with here and there a more elicitive approach, when parties and issues allowed for it.

The prescriptive manner in which the negotiations were treated fits the overall image of the US commitment to peace in the Balkans. Once it had thrown in its weight, failure would be considered a loss of prestige, possibly affecting the US foreign policy in a negative way.[230] Carrots and stick were to force the warring parties into reaching an agreement, and military force was used to persuade the Serb Republic to comply. Having gathered all those parties at Dayton through threats and promises, leaving it up to them to forge a solution for the conflict might seem like a bad idea. US proposals and drafts were to guide the process, with the main exception being on the territorial issues.

Strangely, while comprising some of the most contentious issues, the initial proposals for a territorial division were elicited from the parties. The unreasonable proposals and counter-proposals that emerged quickly led to anger and frustration, deteriorating the interpersonal relationships. Finally, Holbrooke decided to return to the more prescriptive approach he was using on the other issues.[231] As he wrote it in his memoirs: 'We now realized that each map drawn by the parties would be worse than its predecessor. We would have to present our

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[228] Holbrooke (1998), pp. 271-272
[229] Chollet (1997), pp.183-186
[230] *ibid*, pp. 191-193
[231] *ibid*, pp. 254-270

own map – the long-awaited 'American map' – the next day. If we did not, we would never move forward.'[232]

Presence of an Internal-External Mediator

The Dayton negotiations were mediated by a US delegation, headed by Richard Holbrooke. This delegation undertook a form of shuttle diplomacy, flying between Zagreb, Belgrade and Sarajevo. Several authors, including Bercovitch[233] and Lederach,[234] praise the role that an engaged mediator can play in solving the conflict. Other authors stress the degree of neutrality that is required for a mediator to gain the parties' trust. In Bosnia, the presence of a mediator was a necessary prerequisite for any talks to take place at all, as the three leaders refused to talk to one another in a more direct way.[235] Moreover, the diplomatic offensive was initiated by the US itself, and its commitment was essential for the talks to continue. For Bosnia, an internal mediator was not an option. Throughout the ethnic conflict, a strong radicalisation took place and all options – Muslim, Croat or Serb – were unacceptable to the ethnic groups to which they didn't belong. A successful external mediator, other than the United States also was highly unlikely. European efforts had failed, and the weak performance of the UN had caused resentment with the local population and its leaders.[236] The parties needed someone with the will and the capacity to guarantee the agreement[237], as mutual mistrust was high and the implementation of any peace agreement seemed unlikely unless it was vigorously enforced. So, it seems that an external mediator was essential here and that for peace to be achieved this mediator had to be the US.

Impartial-Partial Mediator

The US cannot be said to have been an impartial mediator in this case. Rather, there was a positive bias towards the Muslims while the Serbs – especially the Bosnian Serbs – were viewed upon to be the main instigators of the war.[238] Evidence for this can be found in the bombing raids that strictly focus on targets throughout the Republika Srpska, the initial US refusal to speak with Mladic and Karadzic, the 'isolation' of Bosnian Serbs at Dayton and more obviously, the fact that Muslims had been left the option for Holbrooke to either mediate a unitary

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[232] *ibid*, p. 270

[233] Bercovitch and Lee (2003)

[234] Lederach (1996)

[235] Izetbegovic and Tudjman were still speaking to each other before the Dayton negotiations. However, Holbrooke notes that in those meetings, a tense atmosphere prevails and shouting matches frequently occur.

[236] Stewart (2006), p.755

[237] See the 'Credible Commitment Theory' in Walter (2002), pp. 19-33

[238] See the accounts of the American engagement in Chollet (1997), Holbrooke (1998), Kumar (1997) and Lapping (1995)

state or the partitioning of the country.[239] If that question had been asked to the Serb Republic, the response would seemingly have been quite different.

However, this partiality of the US delegation did not hamper their mediation efforts. All three sides were convinced that if there was to be a mediation process, the US should be the mediator. US commitment implied a guarantee that the other parties would abide by an agreement because of its superior military skills and its role as a world leader. Europe and the United Nations had lost much esteem, exactly because this capacity and willingness to control the parties was lacking. Rather it looked as if the parties – read: the Serb Republic – were controlling and limiting the European and UN actions instead.

A clear and compelling vision of the end-state[240]

In Bosnia and Herzegovina, the framework within which the negotiations would take place had been designed in the pre-negotiations. Bosnia was to remain a single state, in which two entities – the Federation of BiH and Republika Srpska – would reside. The division of powers and competences between the state and the entity level was then to be agreed upon at Dayton. Despite the existence of a pre-agreed vision on the desired end-state that was laid out in the preliminary talks, this end-state was not really compelling to the Bosnians. None of the three ethnic groups was very keen about the state configuration that at that time looked like the only possible compromise. The Muslims preferred a unitary state in which they would have majority control, the Bosnian Croats wanted their own entity within Bosnia and Herzegovina with a status that would be equal to that of the Federation of BiH and the Republika Srpska, and the Bosnians Serbs wanted their own independent state.

As a result, the Dayton negotiations that had to refine these general guidelines in a blue-print for a viable state would prove to be very difficult. The Muslims wanted a strong state-level in which they would have the majority weight that corresponded to the demographic situation. The Serbs defended a strong entity-level and tried to weaken the state level as much as possible. The Bosnian Serb delegation members had never really accepted the idea of a single-state Bosnia and for this would largely be excluded out of the talks, while Milosevic pressured them to sign the agreements he had negotiated for them. For Holbrooke's team it was not acceptable that they kept trying to change the agreed framework – the vision of the end-state – in which the negotiations would take place. The problem would be transferred to the implementation phase, and although the Bosnian Serbs claimed to be no longer in search of independence in 1996, many in the Republika Srpska are still dreaming of separatism. On the other hand, leaders of the Federation of BiH are occasionally crying out for the abolishment of the entities and the creation of a unitary state. Therefore, although settled on paper,

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[239] Holbrooke (1998), p. 96
[240] Based on Holbrooke (1998) and Chollet (1997)

the question of the end-state is still vivid in the minds and the hearts of the Bosnian people.

Visual representation for the evaluation of the negotiation process

Inclusive negotiation process				[orange]	Exclusive negotiation process
High level of authority of the negotiator		[light green]			Low level of authority of the negotiator
Symmetric power relations			[yellow]		Asymmetric power relations
Constructive relations between parties				[orange]	Inimical relations between parties
Elicitive mediation				[orange]	Prescriptive mediation
Endogenous negotiation process				[red]	Exogenous negotiation process
Mediation is requested by all parties				[orange]	Mediation is not requested by the parties
Impartial mediation			[yellow]		Partial mediation
External mediator	[green]				Internal mediator
The parties share a clear and compelling vision of the end-state				[orange]	The parties share no clear and compelling vision of the end-state

Table 7: Visual representation for the evaluation of the negotiation process

2. Evaluation of the General Framework Agreement for Peace

Free Acceptance – Pressure and Coercion

Dayton's success could only be achieved by pressuring the parties to negotiate. In order to make them sign the final agreement, coercion was equally applied.[241] This, however, was not so much the case for the Croats who gained much of what they wanted, most importantly with the case of Eastern Slavonia. The Bosnian Croats were less happy with the outcome, but a last-minute return of parts of the Posavina-pocket was sufficient for them to accept the agreement, which they probably would have done anyhow under Croat pressure.[242]

For the Serbs and the Muslims, their acceptance of the agreement was elicited through carrots and sticks. At Dayton, Milosevic made a rather large last-minute effort for Dayton to succeed, as his prize – sanctions relief – would only be awarded when a formal agreement was signed. But his commitment towards the peace process is likely to have been driven more by the international pressure – for example, in the form of economic sanctions – than by a genuine desire for

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[241] Cousens (2002), pp. 536-538
[242] Holbrooke (1998), pp. 281-282

peace. In the case of the Bosnian Serbs, the question is whether they had really accepted the agreement. Indeed, the political leaders of the Republika Srpska signed the DPA, but they only did so two days after the official initialling ceremony under heavy pressure from Serbia. Meanwhile, Karadzic, President of the Republika Srpska, stated publicly that 'Bosnia would bleed for decades' if the terms of Dayton were left unchanged.[243] Throughout the implementation phase, the factual rejection of the DPA by the Bosnian Serbs would become clear. It seems that only what the international community was willing to enforce by military or other measures, would the DPA be – reluctantly – implemented.

The Bosnian Muslims too, were not fully satisfied with the document they had to sign. For a while, it looked as if Dayton would fail due to their refusal to accept the DPA. US diplomats tried persuasion, launching an ultimatum, carrots (the equipping and training of the Bosnian army) and sticks (publicly blaming the Muslim intransigence for Dayton's failure, lifting the arms embargo with the US abandoning the conflict and the peace efforts,…) Eventually, the last-minute concession from Milosevic to give the city of Brcko up for arbitration could convince them to sign the agreement, albeit reluctantly.[244] President Izetbegovic stated his views publicly at the initialling ceremony: 'And to my people, I say, this may not be a just peace, but it is more just than a continuation of war. In the situation as it is and in the world as it is, a better peace could not have been achieved'[245]

The fact that the DPA was not accepted freely had clear consequences for the implementation process. First, a large international military effort had to guarantee that the parties would not resume the fighting and that a secure environment could be created in which the peace building could took place.[246] As it later appeared, the deterrence-effect stemming from the 60,000 man strong and heavily equipped IFOR troops would suffice to stop any party from openly defying the Dayton accords. However, in drawing the IFOR mission statement, the US army had insisted that although it would accept the authority to take on additional tasks related to ensuring the civilian implementation of the accords, it should not be obligated to do so.[247] The General chosen to command the troops, afraid of mission creep, preferred to interpret his mission narrowly and limited it to what he was *obligated* to do. As the 'stick' of military force thus became useless for the civilian aspects of the agreement, the civilian implementation process was soon lagging behind, with all parties hampering, impeding and/or an outright breach of the agreement.

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[243] *ibid*, p.318
[244] *ibid*, pp. 301-310
[245] *ibid*, p.311
[246] *General Framework Agreement for Peace*
[247] Holbrooke (1998), pp. 332-340

Internal support: high – low[248]

The level of internal support for the agreement differed. Many civilians were relieved that the fighting had ended and that they could try to resume their lives. Yet not all of them were so lucky. The new territorial divisions led to new refugee flows in those areas changing hands, as for example in Grbavica.[249] The slow and faltering implementation would prevent refugees from returning to their original houses. In a strange way, this would lead to a change of shifts of those supporting and those criticizing the agreement. [250]

Overall, the Serb Republic was least supportive. This is not surprising given their limited inclusion in the negotiation process and in the forging of the agreement. The main 'injustice' of Dayton was, in their eyes, that they were forced to live in a single-state Bosnia, rather than gaining independence. Furthermore, the loss of Sarajevo and the undetermined status of Brcko were bitter pills to swallow. Important to note is that the war-time leaders such as Karadzic, Mladic, Krajisnik and Koljevic never really wanted negotiations, nor was their agreement with the Dayton accords based on anything else other than sheer pressure and coercion.

The Bosnian Muslims had many of their interests satisfied, but the war had been brutal and the will to return to a peaceful life with their former enemies was lacking. The continuing attempts to evade the implementation of the agreement by the Republika Srpska only added to this mistrust, and soon they too became just as obstructive to the implementation of their commitments within the DPA. Bosnian Croats were – as always – divided between those really favouring a unified Bosnia, and those aiming to create their own state. The last ones would continue to oppose the implementation of the DPA, feeling that they should be entitled to have their own 'entity'. Even today, some important Croat voices claim their unhappiness with the Federation Agreement and the Dayton provisions, occasionally threatening to declare independence.[251]

Today, more than a decade after DPA, it is remarkable to notice that a shift has occurred regarding its supporters and those rejecting it.[252] While Bosnian Muslims generally supported Dayton at first, the faltering implementation process did not create the unified state they were expecting. Now, in political Muslim circles, the wish to reform Dayton and to abolish the entities, so that the country can really be unified, is heard. Bosnian Serbs on the other hand, seeing how few of the hated Dayton terms were realized and how this created a highly autonomous, and now independent, entity became some of Dayton's most ardent supporters. In the meantime, international criticism is still standing, and seems to be getting more outspoken. This will be discussed below.

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[248] Based on: Holbrooke (1998), pp.313-376 and Chollet (1997), pp. 253-261
[249] *ibid*, pp. 335-340
[250] Tuathail, (2006), pp. 149-151
[251] See for example Human Rights Watch (2002)
[252] Tuathail, (2006), pp. 149-151

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External support: high-low

Despite its flaws, the international community was generally supportive of the Dayton peace agreement. The EU, France, Germany, Russia, the US and the UK all had representatives at Dayton.[253] Although only the US was involved in the 'real' negotiations, all delegations were aware of what was happening and/or being agreed upon. This was essential given the respective roles those countries would have to play in the implementation process. Keeping the Russians and the Europeans on board therefore was one of Holbrooke's concerns throughout the negotiations. And although some were unhappy about the limited influence they had on the establishment of the peace accords, this did not lead to a withdrawal of their support for the peace agreement itself. Yet, some critiques would remain.

One argument against the Dayton accords that seems to return over and over is the following: while in Dayton the opposed positions of independence and a unified state had to be transformed into a common solution, in reality the peace agreement created neither independence nor a viable unified single state.[254] The ethnic-based power-sharing that was invented at Dayton further is said to be an assault on the basic principles of democracy and an internationally endorsed act of ethnic discrimination towards those Bosnian citizens that were non-Serb, non-Croat and non-Muslim. These, as well as some other criticisms are not to be simply ignored. Today, the country is struggling with a difficult decision to make. As it appears, the current constitution did not allow for a stable Bosnia respecting the international principles of democracy and human rights to emerge, nor to find its way towards a sustainable peace.[255] Therefore some argue that the constitution has to be changed. Unfortunately, altering some of the Dayton provisions might open up the discussion on each and every one of the negotiated terms and conditions. And as nationalist tendencies and high-levels of intransigence are still characterizing the country's leaders, catastrophe is never out of sight.

Comprehensive-Partial agreement

Initially, the Dayton negotiations were intended to result in a comprehensive peace for the Balkans. This is why the Eastern Slavonia issue, which didn't really affect Bosnia itself, was included in the negotiations.[256] Had it been left unsolved there and then, the fighting between Croatia and Serbia was likely to resume, leading to renewed bloodshed and possibly dragging the justly pacified Bosnia in the war. But despite this desired comprehensiveness, several contentious issues were either deferred or left vague. The justification presented was that with the situation as it was, agreement on those issues seemed unlikely and including them in the negotiations then could have jeopardized the entire agreement.

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[253] Holbrooke (1998), pp.318-319
[254] See, for example: Cousens (2002), pp. 543-545
[255] International Crisis Group (2007), pp. 9-11
[256] Lapping (1997)

One example of such a contentious territorial issue that was initially negotiated but later deferred to arbitration was the status of the city of Brcko. On the final day of the negotiations, it became clear that the Muslims would not sign the agreement unless they got Brcko.[257] The ownership of the city had been assigned to them by a previous peace agreement which was never ratified. For the Serbs, giving up Brcko meant that their entity would be divided into two separated parts, and the 30 metre corridor they were offered was not enough to guarantee the territorial unity of their entity. The importance of Brcko for both sides was clear, so when arbitration had to take place one year later, a formula was invented by which the city would belong to both entities and form a separate district. At that time, this probably was the only option with which both sides could live. Any other arbitration outcome risked to derail the peace process by heightening ethnic tensions in an already difficult time.

The terms of an agreement for a mutual recognition of Serbia and Croatia, were another problem left unsolved at Dayton.[258] Also, while Dayton was supposed to be a comprehensive peace agreement for the Balkans, the Kosovo issue which had sparked the disintegration of Yugoslavia in the first place, was deliberately excluded from the negotiations.[259] Only four years later, in 1999, events there would once more inflame the Balkans. The images of ethnic cleansing and massive refugee flows would fill the television screens once again.

Reasonable satisfaction of interests - dissatisfaction of interests

The Dayton Agreements[260] settled the most important issues of territoriality, security and constitutionality, so that a viable and stable country could be created. In this, it can be argued all sides interests were taken into account. The Muslims gained the single-state Bosnia they longed for, but the state would have a federal structure with a high level of autonomy awarded to the entities, the Federation of Bosnia and Herzegovina and the Republika Srpska. This autonomy was indispensable if the Republika Srpska was to be kept on board. The 51-49 territorial division between the entities that was proposed in the former peace plans was finally agreed upon, and Sarajevo would be a unified city under Federation control. At the federal level, a system of ethnic-based power-sharing was devised, so that all population groups were fairly represented and that no ethnic group could dominate the others. In the entity of the Federation of Bosnia and Herzegovina, further power-sharing was arranged to guarantee the Bosnian Croats an acceptable level of autonomy.

As for security, all parties were allowed to preserve their armies but a key was invented to determine how the proportional strength between them should be. To create these respective proportions a double measure was decided upon, with on the one hand a disarmament programme and on the other hand an equip-and-train

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[257] Beriker-Atiyas and Demirel-Pegg (2000), p.368
[258] Balkan Watch (1996)
[259] Lapping (1995)
[260] *The General Framework Agreement*

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programme for the Federation of Bosnia and Herzegovina. For the first year of the implementation, a large and heavily-equipped internal peacekeeping force was provided, led by NATO. This force would separate the warring parties, guard the inter-entity boundary line and prevent any new flare-ups of violence. Further, it would create a safe climate for refugees to return to their homes. Later, the mandate of the international force would be extended and even today a limited number of international peacekeepers is present in Bosnia, although no longer under NATO command.[261]

Concerning Bosnia's neighbouring countries, Croatia regained Eastern Slavonia while the Former Yugoslav Republic won recognition and prestige, as well as the much wanted sanctions-relief. Therefore, it can be argued that all sides gained some and lost some, but that the DPA satisfied their basic interests at a reasonable level. However, in psychology it is a well-known saying that people do not react to reality, but to their perception of it. And it seems that at least in the Bosnian Serbs' perception, the agreement was a 'sell-out' and did not satisfy their interests very much.[262]

Adequate treatment of all conditions for sustainable peace – inadequate treatment

Any peace agreement, for it to create a long-lasting and sustainable peace, has to address the different sustainable peace building blocks. These are being referred to by L. Reychler[263] as (1) effective communication, consultation, and negotiation; (2) a consolidated democracy; (3) a sustainable social free market; (4) cooperative security; (5) an integrative climate; (6) multilateral cooperation and; (7) the presence of a critical amount of peace building leadership.

Two of these peace building blocks have not been treated in the Dayton Peace Agreement. First of all, no *effective communication, consultation and negotiation procedures* have been created. Although there is an annex demanding the creation of an arbitration system by which the parties can settle their differences, this does not allow for the parties to sincerely discuss the issues at hand and engage in a genuine problem-solving. While no real technological, mechanical or distance-related problems exist that would prevent parties to effectively communicate with one another, the will to do so often seemed to be lacking and no facilitation has taken place. Second, *socio-economic issues* have hardly been talked about at the Dayton negotiations. Therefore, the framework for a sustainable social free market can not be found in the peace agreement. Yet, in the post-Dayton era, interaction with the EU, World Bank and the IMF created some incentives for a sustainable social free market to arise. This however is not related with the Dayton Peace Agreement in itself, except for some financial and other aid that stems from it.

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[261] *European Union Force in Bosnia and Herzegovina,* EUFOR, available at: http://www.euforbih.org/ (last accessed 06/07/08)
[262] Cousens (2002), pp. 541-545
[263] Reychler (2003), pp. 48-49

Concerning the *democratic process*, a lot of time had been spent throughout the negotiations in discussing the election system. However, the resulting elections, largely based on ethnicity, have often been criticized for being undemocratic.[264] The power-sharing system of Bosnia and Herzegovina is effectively excluding non-Croats, non-Serbs and non-Muslims from the important political roles. Furthermore, the respective electorates are to be represented through their own ethnic group, even if they would prefer otherwise. Another problem which is not incorporated in the peace agreement itself but in the implementation phase, are the so-called 'Bonn Powers'[265] of the High Representative for Bosnia and Herzegovina.[266] These powers allow for the HR to remove elected leaders, abolish laws created by the parliaments or push through laws on which no parliamentary approval was forged. While there may be solid reasons for the creation of these special powers, it can hardly be called 'democratic'.

The importance of *cooperative security* seemed to be recognized fully by including the neighbouring countries, Croatia and Serbia, in the agreement. Both had been overtly or covertly involved in the war in Bosnia and Herzegovina. Nevertheless, one of the many criticized provisions of the DPA allowed for the entities to keep separate armies, making such a cooperative security unlikely.[267] Moreover, while the DPA did include a disarmament regime, it also provided for an equip-and-train programme for the Federation of Bosnia and Herzegovina. In this way, it appears that security was to be found in the idea of mutual deterrence – with the proportional strength of both parties being fixed – and in the presence of an international peacekeeping force, rather than through the creation of a cooperative security regime.

It needs to be said that the Dayton agreements did include some trust-enhancing measures in an attempt to create an *integrative climate*. But those measures were limited and their success is in doubt. The annex dealing with refugee return then had a much larger impact on the psychological climate in which the peace building would take place, albeit a negative one. Returning refugees – especially in areas where they constituted a minority – would be the object of harassment and violence, creating further tension and mistrust. Furthermore, new refugees were created in those areas that changed hands, sometimes burning their houses and possessions as they left.[268] All of this, although unintended and possibly hard to prevent, had a much greater – and negative – impact on the climate than did measures to improve the relationship between the parties.

As far as *multilateral cooperation* is concerned, it is true that many countries were involved in the peace building process in BiH. This was the case at the military level, and even more so at the civilian level. A question here is whether this involvement can be genuinely labelled 'cooperation' or whether the

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[264] Cousens (2002), pp. 554-556
[265] Chandler (2005), pp. 339-341
[266] The High representative for BiH will also be referred to as the 'HR'.
[267] *General Framework Agreement for Peace.*
[268] Cousens (2002), pp. 548-551

international community in a way took over the process from the Bosnians. Some believe that the 'Bonn Powers' of the High Representative of BiH had the effect of disowning the parties.[269] If the Bosnians didn't cooperate in implementing the peace agreement, then the international community would implement the DPA and seemingly keep the peace process on track by her own efforts and means.

This high level of international intervention might have been required to prevent a blockage of the peace process and a possible return to war. A very important peace building block that was certainly lacking at Dayton and in the immediate post-Dayton era is the presence of *local peace building leadership*. The political leaders involved in the peace process - Milosevic, Karadzic, Tudjman, Izetbegovic etc. –all were known as radical nationalists and they would remain in power for quite a while after the DPA had been signed.[270] Some of them – for example, Karadzic – had only signed the agreement under severe pressure and went as far as to publicly claim their factual rejection of the DPA. Today an antagonistic climate is still prevalent and leaders gain votes by creating fear and proclaiming nationalism.

The flaws of the DPA regarding the main peace building blocks have had a serious impact on the faltering implementation process. Even today, 13 years after Dayton, Bosnia has not become a stable and viable state on the road towards a sustainable peace. Although there is no imminent military threat from either side, this peace appears to be more the so-called 'absence of war' rather than a sustainable peace. Proof of this can be found in the decision to extend the mandate of the High Representative for BiH with another year until June 2008, despite the intention of abolishing the function in 2007.[271] In the current context where nationalist Muslims are demanding the abolishment of the entities, nationalist Serbs refuse to change the DPA provisions that surprisingly worked in their advantage and nationalist Croats still claim the right on a separate entity, this mandate-extension might have been a welcome move.

Precise/principled agreement, concrete measures/interpretative freedom

The General Framework Agreement for Peace appeared to be a rather principled agreement in which much interpretative freedom was given to the parties.[272] However, one cannot read this agreement without looking at the sometimes highly detailed, more specific annexes that often explicitly stated what concrete measures were to be taken by whom. These annexes were to be interpreted within the General Framework Agreement for Peace that they accompanied but form the main body of the DPA. While of course it can be said that some annexes still contain some vagueness and are open for interpretation, the totality of the agreement has been of a rather precise and concrete nature. Despite this clarity, much of the agreement would be only reluctantly implemented under pressure of

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[269] Chandler (2005), pp. 341-345
[270] Cousens (2002), pp. 554-556
[271] International Crisis Group (2007), pp. 6-8
[272] *General Framework Agreement for Peace*

the international community – represented by the High Representative for BiH and his Bonn Powers – and some provisions would not be implemented at all. Also, a distinction can be made between the highly detailed military provisions and the less detailed – and some say rather minimalist – civilian and political provisions.[273]

Third party guarantees for the demobilization period – no third party guarantees

Third party guarantees for the demobilization period were very far-stretching. A 60,000 strong and heavily equipped Implementation Force (IFOR) under NATO command was created to guarantee compliance with the peace agreement.[274] The deterrence effect of those troops was sufficient to prevent anyone from openly defying or breaching the agreement. Important here is that it was a NATO-led force, and not a UN peacekeeping mission. While the former had demonstrated a willingness to use force during the bombing raids on the Republika Srpska positions, the latter was mainly associated with its previous display of an overwhelming inability to act.

This military presence had a positive influence on the implementation and peace building process. While both entities kept separate armies on a relatively short distance of each other, the demobilization of some of those troops could have caused incidents if they weren't effectively separated by an international force. The success of IFOR in preventing and containing new flare-ups of violence, in combination with the slow implementation of the civilian aspects of the DPA and the hardly improved stability led to the extension of its mandate. Originally, IFOR was established as a one-year peacekeeping intervention. In practice, IFOR was immediately replaced by the Stabilisation Force (SFOR) and in 2004 by the European Force in Bosnia and Herzegovina (EUFOR), which is still in place at the time of writing. Ironically, many of the problems with the civilian implementation might have been prevented if IFOR had been willing to enforce such implementation measures. The IFOR Commander however, afraid of mission creep, refused to engage its troops for nation-building purposes and so the civilian implementation lost its main 'stick' by which to coerce the parties into compliance.[275]

Power-sharing guarantees – No power-sharing guarantees

The Dayton Peace Agreement provided for detailed power-sharing guarantees. The attention that was given to power-sharing arrangements in the new constitution of BiH, is not surprising when one looks at the outbreak of the war. One of the root causes of the conflict was the quest for power. The Bosnian Muslims had declared Bosnia's independence only after the secession of Croatia

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[273] Cousens (2002), p. 543
[274] *General Framework Agreement for Peace*
[275] *Supra*

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and Slovenia left them in a Yugoslav Federation in which the Serbs were overwhelmingly dominant. This Bosnian independence, however, turned part of the previously 'dominant' Serbs into a minority in a Muslim-dominated state. This led to the creation of secessionist Republika Srpska. Then, in the territories that remained under control of the BiH government, Bosnian Croats created the irredentist Croatian Republic of Herzeg-Bosnia, for why being a minority when they could be a majority in their own nation-state, Croatia?[276] Therefore, any successful peace agreement that did not partition the country would have to possess solid power-sharing guarantees.

The ethnic-based power-sharing provisions of the DPA arranged for a three-member presidency, with one member to be elected from each ethnic group. The parliamentary assembly is divided in a House of Representatives and a House of Peoples, with a fixed key on the proportion of parliament members to come from the entities. Further, an 'alarm bell procedure' was set up so that no decisions can be made against the vital interests of a population group.[277] Other than the power-sharing on the federal level, the autonomy of the entities – and in the case of the Federation of BiH, the autonomy of cantons and municipalities with a Croat majority also – gave further guarantees to the ethnic groups.

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[276] Lapping (1995)
[277] *General Framework Agreement for Peace*

Visual Representation for the evaluation of the agreement

Voluntary acceptance of the agreement				🟥 red		Parties were pressured/coerced to accept
Internal support for the agreement is high				🟧 orange		Internal support for the agreement is low
External support is high	🟩 green					External support is low
The agreement is comprehensive			🟨 yellow			The agreement is not comprehensive
Reasonable satisfaction of interests				🟧 orange		No reasonable satisfaction of interests
Power-sharing guarantees		🟩 light green				No power-sharing guarantees
The conditions for sustainable peace are dealt with in a satisfactory manner				🟧 orange		The conditions for sustainable peace are not dealt with in a satisfactory manner
The agreement consists of concrete measures			🟨 yellow			The agreement mainly consists of principles
Precise agreements with little space for interpretation			🟨 yellow			Interpretative agreements with little precision in its provisions
Adequate third party guarantees for demobilization	🟩 green					Inadequate third party guarantees for demobilization

Table 8: Visual representation for the evaluation of the DPA

3. Evaluation of the implementation of the DPA

Politically and/or legally binding agreement - Not Binding

A political agreement creates a political obligation to do or not to do something, possibly after some other conditions are fulfilled. In se, there are no legal sanctions if the agreement is broken, although it can cost one his (political) credibility or one may encounter some harsh countermeasures if he proves an unreliable negotiating partner.[278] A legally binding agreement is sanctioned under national and/or international law.[279] The Dayton Peace Agreement was definitively intended and perceived to be both a politically and legally binding document. Evidence for this can be found in the involvement of legal teams in the drafts, or the introduction of a legal advisor in the case of the Muslims. Furthermore, the DPA was 'witnessed' by several other countries and included pledges and guarantees of international aid and assistance in implementing the agreement.

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[278] Based on Simmons (1979)
[279] Based on Smith (1976)

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Under international law, a legal sanctioning mechanism is often absent. In such cases, the states themselves are responsible for ensuring compliance. However, only rarely will a state renege on the binding commitments it has made. This is largely because of the credibility loss that might cause its negotiating partner to refuse to engage in future negotiations with the 'unreliable' state. In the case of the DPA, however, the main warring parties that would have to abide by the peace agreement were not states but ethnic groups. The inclusion of Serbia and Croatia in the peace process, making them co-responsible for the behaviour of their ethnic kin, was partly to resolve this issue. However, this strategy could only be successful in as far as Tudjman and Milosevic could actually influence what happened in BiH. The compliance of the parties therefore was further ensured by a large international presence in the country that used carrots (e.g. economic and financial aid) and sticks (e.g. military force and removal of office) to enforce the DPA.

Verification measures: Effective - Ineffective

Verifying the parties' compliance with the Dayton provisions would be left primarily to external actors.[280] IFOR was to oversee the compliance with the military provisions of the agreement and to create a safe environment in which sustainable peace building could take place. The High Representative followed up on the implementation of the civilian aspects of the agreement. The OSCE would monitor the elections and verify that they were free according to international standards. Other verifying activities were left to specially created mechanisms such as the Commission on Human Rights, while the prosecutor of the International Criminal Tribunal for Yugoslavia followed up on the efforts of the parties to capture war criminals.

All in all, it can be said that those verification measures were fairly effective. However, knowing when parties are violating the DPA does not by itself change the parties' behaviour. Therefore, the availability of appropriate sanctions is highly important.

Appropriate sanctions: available – Not available

While sometimes the fear of being publicly exposed as a 'cheater' is sufficient for convincing the parties to abide by an agreement, this is not always the case. In Dayton, given the coerced fashion by which the agreement was reached, chances that the parties would comply simply because of the naming/shaming process were very unlikely. This is why a general principle of law dictates that 'there can be no crime without a punishment'. At Dayton, the punishment would exist out of the reactions of the international actors on the ground. These sanctions could be very diverse, ranging from refusing financial aid up to the use of military force.

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[280] *General Framework Agreement for Peace*

The Dayton Peace Agreement provided a very important 'stick' of military force to be used against those who openly defied the peace agreement and who resorted to violence and/or military action. Furthermore, it created the post of a High Representative for Bosnia and Herzegovina to overlook the civilian implementation of the agreement. In 1997, faltering implementation would lead to an increase in the HR's powers by creating 'the Bonn Powers'. These gave the HR the right to remove elected leaders that were hampering implementation, as well as to abolish laws that were violating the DPA and to push through the laws necessary for implementing the agreement. This strengthened the original position of the HR, who previously lacked a credible threat of force. Largely, because the military refused to engage in what it labelled 'nation-building'. Various other forms of 'sanctions' would be devised, for example, by making any progress on the road towards the EU dependent on the apprehension of war criminals and the implementation of the DPA.

Adequate capacity for implementation – inadequate capacity

Capacity for implementation can relate to many different aspects, for example, financial, economic, social, leadership, administration and organization. In some cases a lack of internal capacity can adequately be remedied by external support, in other cases it cannot. In the implementation of the DPA, some capacity-related problems did exist, an important one being related to the right of refugee return. This right was included in the agreement in order to abolish the effects of ethnic cleansing, a practice that could not be accepted. However, as many houses were destroyed and looted throughout the war, the houses of those IDP's/refugees willing to return often were inhabited by other IDP's/refugees.[281] Neither party was willing to evict its own kin out of the houses they now lived in – their own houses quite often destroyed by the enemy – in order for someone from another ethnic group to return. Politicians that would do so would be likely to lose the elections and, in fact, many politicians still preferred a pure ethnic state.[282] Moreover, return was often prevented by angry masses attacking the returnees as well as by bureaucratic impediments.

Another problem was that the early democratic elections reinforced the radical elements on all sides.[283] Politicians could not come to power by speaking in conciliatory terms (especially in the ethnic-based election system) and the nationalists that were in government did not have the political will to implement the agreement. Financial and economic resources were also lacking, but this could be partially helped by international aid. However, this aid often was made dependent on the actual implementation of the agreement, risking a vicious circle to take hold. Thus, a lack of peace building leadership, a neutral bureaucracy or police force, and material or financial resources seriously constrained the

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[281] Dahlman and Tuathail (2005), pp. 644-662
[282] *ibid*, pp. 644-662
[283] Cousens (2002), pp. 554-556

capacity for implementation, as well as the social and political unwillingness for reconciliation.

External support: adequate – inadequate

A great many external actors gave their support to the peace process that had started at Dayton: international organisations, individual countries and NGO's. They all had programmes running in Bosnia. Support would comprise, amongst other things, military aid, an international police force to help create a neutral Bosnian police force living up to international standards, the International Criminal Tribunal for Yugoslavia for judging indicted war criminals, financial and economic aid for rebuilding the country. Some believe that although the engagement was high, it was not enough. They point out to the military refusal to help the faltering civilian implementation process.[284] Others think that the efforts to strengthen civilian implementation, in creating the 'Bonn Powers' were disowning the parties of their conflict and saw the international meddling as too extensive.[285] Here it is argued that although improvements could have been made, the international community invested much in the implementation of the DPA. Initial mistakes to work with fixed dead-lines for military support were corrected later on in the process. And the – proclaimed - commitment of Europe towards the peace process still goes as far as to create a stable and democratic BiH firmly on the road of European integration. The question now is whether the international community is willing to remain engaged in the Bosnian peace process for as long as it takes, for a sustainable peace is not yet reached.

Appropriate procedures for handling disputes – No appropriate procedures

Annex 5 of the DPA provided for a system of arbitration to be created.[286] Both entities agreed that they would resort to this arbitration system for settling their disputes. Furthermore, if any dispute arose out of the interpretation of the DPA or out of a flagrant violation of the agreement, the IFOR commander and the High Representative for BiH had the authority to decide on what constituted a breach of the agreement and thus on how the DPA should be interpreted.

However, the presence of such settlement systems could not resolve the main dispute. Although it is settled on paper in the DPA, it still lives on in the minds and the hearts of the Bosnians. That dispute is about the nationalist Muslims demanding a unified single-state and the abolishment of the entities and about the Serb Republic and nationalist Bosnian Croats still desiring as much autonomy as they can possibly get.[287]

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[284] See for example Holbrooke (1998)
[285] This was the belief of the former High Representative for BiH, Schwarz-Shilling; International Crisis Group (2007), pp.5-6. See also Chandler (2005), pp. 336-349
[286] *General Framework Agreement for Peace*
[287] Chandler (2005), pp.149-151

Efforts to educate and inform the people

After concluding a peace agreement, the people affected by it should be adequately informed and educated about the peace and about the measures and steps that will be taken. In this the media plays an important part. The media-landscape of BiH at the end of the war however, appeared to be ethnically biased and often in hands of the wartime leaders and ethno-nationalists.[288] Due to the low purchasing power, online and print media had a limited impact only. Print media usually were published in a small geographic area and had a tendency to focus on the interests of the regional majority group as to maximize their potential readers' public. Audiovisual media were in the hands of the nationalist leaders that had led the country into war. Especially in the Republika Srpska the media was monopolized by persons indicted for war crimes who were using it for their own nationalistic goals. The lack of media voicing a tolerant and multi-ethnic view of BiH posed a problem as to provide objective information about the peace agreement and its consequences.[289] Nevertheless, this was something on which the international community had anticipated. After the signing of the DPA, reconstructing the media landscape in BiH was one of the priorities of the agencies dealing with the implementation of the civilian provisions of the DPA. Unfortunately, the first years after the DPA had been signed the impact of these efforts was still limited and reporting was in an outspoken nationalist manner, with, for example, Karadzic stating in the Bosnian Serb media that unless the DPA was altered, BiH would 'bleed for decades'. The nationalistic and ethnically biased reporting helped create a single-state BiH in which the ethnic groups lived virtually separated from each other. This segregation culminated in Muslim, Croat and Serb children having separate schools and following a different curriculum, although they sometimes share a school building with one another. In those cases, classes were given in 'shifts.' This entails the danger that even the young generation will not have received balanced information on the causes of the war and on the events during the war, as history courses may well differ.

Visual Representation for the evaluation of the implementation of the agreement

The agreement is politically and legally binding	🟩					The agreement s not politically and legally binding
There are effective verification measures			🟨			Verification measures are absent or ineffective
Appropriate sanctions are available			🟨			There are no or only inappropriate sanctions available

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[288] Jusic, *Media Landscape. Bosnia-Herzegovina*

[289] http://www.hrw.org/summarties/s.bosnia966.html (last accessed 07/06/08)

Adequate capacity for implementation exists				🟧	Inadequate capacity for implementation
Adequate external support			🟨		Inadequate external support
Appropriate procedures for handling future disputes			🟨		No or inappropriate procedures for handling future disputes
Public opinion is well-informed				🟧	Public opinion is ill-informed

Table 9: Visual representation for the evaluation of the implementation of the DPA

Conclusion

In this chapter, the Bosnian conflict was analyzed and the Dayton Peace Agreement evaluated. For this, the negotiation process, the peace agreement itself and the implementation phase were discussed by means of the evaluation criteria proposed in the theoretical part of our research. While the hopes were high when the DPA was signed and despite the external support for the agreement, implementation of the agreement has been difficult. Thirteen years after Dayton, Bosnia still has a long way to go on the road towards democracy, stability and sustainable peace. Even today, the provisions and terms of the DPA are questioned and undermined, both by internal as well as external criticism. While some believe it is time to move beyond the agreement and let normal politics resume, others still cling to it as if it were a rescue buoy in the sea of chaos that nationalist policies created. Yet, the evaluation of the DPA can not be considered all negative. Fighting has not resumed. A relatively safe climate has been created and the last elections finally removed the old nationalist parties from power. While Bosnia hasn't yet reached a sustainable peace, it is still on the road to do so. The implementation problems did not come totally unexpected. Chief mediator Richard Holbrooke envisioned the difficult implementation at the initialling ceremony. In this article, the reasons for it are explained by the evaluation criteria used.

First of all, the exclusion of Republika Srpska delegation members out of the negotiations and the coerced nature of the agreement are important explanatory factors. After all, it is not surprising that a party not included in the peace process and then forced to swallow the agreement refuses its active participation in the implementation of the agreement. However, it can be argued that in this case the inclusion of the Republika Srpska was likely to inhibit any agreement to be reached due to its uncompromising attitude. The coercion was necessary because the conflict had not been ripe when the negotiations started. Although the NATO bombing raids and Croatian advances had created a window of opportunity for negotiations to commence, this window was likely to close once external coercion disappeared. Nevertheless, for the Serb Republic it seemed that least of the DPA was implemented, most its interest were being served.

Second, the prescribed nature of the agreement, the exogenous character of the peace process and the high level of external intervention created the feeling of

the DPA as some sort of 'Pax Americana'. As a result, Bosnians felt less compelled to take responsibility for the peace process. However, that high level of external intervention at the same time might have been the sole thing that kept the peace process on track. Efforts by the previous High Representative not to use his 'Bonn Powers' and to make the parties responsible for the implementation of the DPA are hardly to be called a success.

Third, not all conditions for sustainable peace were adequately treated. The DPA failed to create a cooperative security regime or an integrative climate, local peace building leadership was lacking, social-economic issues weren't addressed and no effective communication procedures were invented. Without the necessary peace building blocks provided by the DPA no sustainable peace could readily emerge.

Although the DPA in itself has proven insufficient to create the stable and democratic Bosnia firmly on the road towards a sustainable peace, it did allow for the parties to make some important first steps in reaching that goal. Although a re-emergence of the conflict and even a resumption of the war is not unthinkable, the least that could be said is that it is no longer an imminent threat. Now it is important that those areas where the DPA was lacking are addressed. Continuing international support seems crucial to bring the peace process to a next phase. However, some serious impediments will have to be overcome for the parties to agree on a Dayton follow-up agreement.

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III. THE OSLO AGREEMENTS (1993-1995)

Introduction

1993 was a historic year for one of the most protracted conflicts of the 20th century. After decades of violent confrontation, Palestinians and Israelis signed the Declaration of Principles on the Self-government Arrangements (hereafter referred to as the Oslo Agreement or the DOP). It was the result of intensive negotiations between an Israeli and a Palestinian delegation, assisted by a Norwegian team of facilitators. Despite the high expectations that were expressed as a result of this breakthrough, the peace process turned out to be stillborn. Several elements relating to the negotiation context, the content of the Agreement and the implementation measures can explain this failure. On the basis of the theoretical framework presented in the first part of this research, we will systematically explore the difficulties in each of these phases. In the first instance, however, we will focus on the context in which the negotiations took place and on the content of the Oslo Agreements.

A. Difficulty of the conflict and the context in the beginning of 1990's

The Parties

Number of the Parties Involved

The Arab-Israeli conflict in general and the Israeli - Palestinian conflict in particular, are not referred to as one of the most protracted conflicts of the 20th century for no reason. One of the basic elements that adds up to the difficulty and the protraction of this conflict is nothing else but the number of the parties involved in it. Even though the crux and kernel of the problem is the struggle between two national movements, the Zionist and the Palestinian national movement,[290] throughout the long course of the conflict and due to many controversial reasons a number of other parties got involved directly or indirectly. In a nutshell, the Six-Day War in 1967 engaged Syria, Egypt and Jordan who fought directly against Israel, as well as Iraq, Saudi Arabia, Kuwait and Algeria who contributed troops to the Arab forces. In addition, it is rather difficult to talk about the Palestinian national movement without distinguishing between the PLO and Hamas, two actors with many commonalities but at the same time many differences especially on the grounds of the realization of their policies and the ways they use to achieve their goals.

We need to clarify however, that since this case study is focused on the negotiations in Oslo and not the Middle Eastern conflict (Israeli – Arab conflict) in general, we recognize as primary actors Israel (the Labor party of

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[290] Khalidi (1991), p. 5

Rabin), the PLO (led by Arafat) and Hamas, which even though at that time was a relatively new actor (established in 1987), had started gaining a lot of support in the occupied territories. Furthermore, we recognize as secondary parties (not directly involved and biased) Syria, Jordan, Egypt and the rest of the Arab countries and as tertiary parties (unbiased and actively or passively involved), the US, the EU, Russia and the UN, also known as the 'Quartet'.

Extremism

The first Palestinian *Intifada*, or uprising, that broke out in 1987 was predominantly nonviolent. Strikes and protests were the main means used against Israeli authorities in the occupied territories starting from the Gaza Strip and spilling over to the West Bank. A year later, the PLO accepted UN Security Council Resolutions 242 and 338, recognizing in that way the existence of Israel. However, the new policies of Arafat were not welcomed by parts of the Palestinian movement leading to the establishment of Hamas. Hamas takes a clearly more extremist position against Israel. According to its charter there is no solution to the Palestine problem but *jihad*.[291] While on the one hand Hamas recognized the PLO as a 'father, brother, relative or friend' of the Islamic movement on the other hand it criticized the PLO's secular course and its leadership and condemned the PLO's recognition of Israel.[292] Even though these short notes on the difference between Hamas and the PLO might have fit better later on in this chapter when the parties' approach towards the conflict will be presented, we chose to also mention it here already simply because the more radical approach that Hamas advocated for was always a threat not only against Israel but against the fragile situation that existed during the negotiations.

Issues at stake

At the time the negotiations started, all Islamic groups from all around the world considered Palestine in its entirety as a Muslim land, no part of which can be ceded under any circumstances meaning that the establishment of a Palestinian state in the West Bank and Gaza would be seen as sinful if it entailed conceding the rest of Palestine to Israel, an entity considered to be illegitimate.[293] In this respect the Palestinian issue was not merely seen as a Palestinian or Arab issue, but as an Islamic problem to the entire Islamic nation.[294] Israel's biggest issue was security and survival in an area surrounded by Arab countries. For Syria the major issue was the Israel occupation of the Golan Heights since 1967 and whatever this entails for the security as well as

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[291] Abu-Amr (1993), p. 12

[292] Ibid., p. 13

[293] Ibid. p. 9

[294] Ibid.

the well-being (e.g. resources) of the Syrians. Jordan, finally, was highly concerned with the influx of refugees on its land.

The conflict between the primary actors was (and still is) an identity conflict that entailed issues related to resources. For PLO the need for a Palestinian state was undeniable; Hamas advocated for the same but equally for the complete destruction of Israel. The latter needed to preserve its identity as a Jewish state and manage to survive in the region while trying to accumulate as many resources as possible from the territories that it occupied since the Six-Day War.

After a very brief look at the issues at stake, it is not difficult to understand their highly competing nature and how their mutual exclusiveness. The only concession made that worked as a bridge between the Palestinians and Israelis was the recognition of Israel by the PLO. However, we mentioned that Hamas was completely opposite to this policy and called for the destruction of Israel. For the secondary actors there were more possibilities for win-win situations regarding their issues. For Syria, for example, it would have been easier to negotiate the situation in the Golan Heights whereas for the PLO the issue of the status of Jerusalem would not be easy to talk about, especially since Israel considered the city as the undivided capital of the country.

History of the conflict and of the parties & the approach taken towards the conflict

It goes almost without saying that the Israel-Palestine conflict has a long and very complex history dating back to the end of the nineteenth century and the establishment of the Zionist movement. Throughout this long course of the conflict, numerous battles were fought, several attempts for ceasefires were made and lots of people were killed. However, the momentum that existed at the beginning of the last decade of the twentieth century seemed unique for resolving the conflict or at least making the first but quite big steps towards this very direction.

The negotiations that led to the Oslo Agreement of 1993 were certainly not the first attempt to reach a peace agreement between Israel and the Palestinians. Previous attempts, encompassing both Track I and Track II initiatives, mainly failed, however, as a result of deep-rooted distrust between the parties, the inability to make significant concessions, and the fact that the Great Powers at that time viewed the conflict from a Cold War perspective.[295] At the end of the 1980s and the beginning of the 1990s, however, several political shocks and profound changes on three different levels (internationally, regionally, and

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[295] For a full and elaborate overview of Track I initiatives, see: Hendriksen Waage (2000).
For Track II initiatives, see: Kelman (2001); Kelman (1992).

domestically) changed the context of the conflict. While the Iron Curtain was unravelling, new opportunities for a revival of the peace process surfaced.[296]

First of all, the end of the Cold War and the demise of the USSR changed the international context dramatically after more than 40 years of superpower rivalry. Until then, US and USSR support to one of the parties in the Israeli-Palestinian conflict had been a major obstacle to peace. From the beginning of the 1990s onwards, however, the USA, being the sole remaining superpower, took the lead in the search for a new and constructive peace initiative, with due attention to the role that Russia could play in the resolution of regional conflicts.

Second, following the Gulf War of 1991, the regional context of the conflict changed too. The PLO condemned the war and supported Saddam Hussein, while the majority of the Arab states supported the US-led coalition. As a result, the PLO was cut off from important political and financial support. Both Saudi Arabia and Kuwait stopped their payments to the PLO, thereby pushing the organization into a deep financial crisis. As a result, funding for hospitals, universities, community centres and family payments in the West Bank and the Gaza Strip was drastically reduced or even terminated. This position of weakness made the PLO susceptible to any diplomatic initiative concerning a new regional peace process in which a Palestinian delegation would be involved. Israel, on the other hand, also faced a new situation as a result of the Gulf War. During the war, it was excluded from the military alliance of the USA and the neighbouring Arab states. Its vulnerability and outside dependence for safety increased its willingness to engage in peace negotiations.

Third, developments at the domestic level further enhanced both parties' willingness for dialogue. The first Palestinian Intifada, which erupted in December 1987, was the Palestinian people's response to a growing feeling of alienation from their exiled leaders in Tunis. Moreover, fundamentalist Islamic organizations, in particular Hamas, were able to rapidly broaden their support among Palestinians in the Occupied Territories, which posed a growing threat to both Israel and the PLO. On the Israeli side, the electoral victory of Yitzhak Rabin's Labor Party in June 1992 was an important turning point. Rabin had convinced the Israeli public with a programme that called for a negotiated solution to the conflict. The Intifada had put the Israeli people under pressure and there were raising concerns about the costs of the occupation. As Hendriksen Waage has rightly argued: 'If Arafat and the official PLO leadership wanted to maintain their authority after the outbreak of the Intifada, they would have to get involved in negotiations or be swept aside by the growing self-confidence of the local Palestinians. (…) The Israeli political

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[296] The following part is based on: Bercovitch and Kadayifci (2002), pp. 119-122; Gewurz (2000), pp. 184-186; Hendriksen Waage (2000); Rasler, (2001), pp. 244-254.

leadership also feared this development. The Israelis needed a stable, friendly government on the West Bank. They felt that only Arafat could give them that regime, the other option being so much worse.'[297]

From an evolutionary perspective on international relations, these profound changes or political shocks can be considered necessary preconditions for the de-escalation of a conflict, as de-escalation occurs 'when adversaries adopt new interpretations, understandings and expectations of their opponents. (…) Political shocks are necessary conditions for the initiation and consolidation of de-escalation. They are the transforming events that cause adversaries to adopt new ways of thinking.'[298] The political shocks that characterized the beginning of the 1990s, however, did not lead to a successful peace process right away. Rather, they provided a context that was conducive to negotiations and out of which the back channel talks in Oslo could emerge.

Internal Opportunity Structure

We already mentioned the pressure that the Israeli leadership felt after the break out of the first Intifada and the concerns regarding the costs of the occupation. For the newly elected government of Rabin, it was quite important to start negotiations with the PLO in order to keep the people of the country united. Arafat, however, faced two different situations. On the one hand, the moderates pushed for negotiations with Israel in order to end the war and move towards a more integrative solution and a win-win situation. On the other hand, the radicals were completely against any negotiations with what they considered an illegitimate entity.

As far as the economic factors are concerned, Israel, albeit a wealthy country, had lived in conflict since the first days of its existence. The economy of the country was quite military oriented but, as mentioned before, the Intifada raised concerns regarding the costs of the war, bearing always in mind the high costs of maintaining an army while being in conflict with more than one countries surrounding its borders. For the Palestinians the situation was completely different. Their economy was indeed poor but this was no obstacle in resorting to war; on the contrary, it could be argued that it was more of a motive given the fact that they had nothing to loose.

Internal and external commitment to peace

Given the setting that existed in the region at that particular time, there was relatively high commitment towards the peace efforts as we have already explained. This is also manifested in surveys that were conducted after the signature of the Oslo agreements, which will be analyzed later on. From the

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[297] Hendriksen Waage (2000)
[298] Rasler, (2001), pp. 240-242

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Palestinian side, those who opposed any peace efforts sided with Hamas, which was completely against any talks with Israel.

The number of actors, the long lasting period of the problem, the highly tensed relations between the players and the history of the conflict itself quite clearly manifest the state of the neighbourhood in which the conflict had been taking place. The Gulf War that had just finished and the role it played in changing the balances in the area is one more concrete evidence that the region was very fragile and that any tipping point or minor event could very easily disrupt the situation.

Finally, as we have already mentioned, the US and USSR support to one of the parties in the Israeli-Palestinian conflict had been a major obstacle to peace. From the beginning of the 1990s onwards, however, the USA, being the sole remaining superpower, took the lead in the search for a new and constructive peace initiative, with due attention to the role that Russia could play in the resolution of regional conflicts.

Mapping the difficulty of conflict transformation

There are few conflicting parties.				🟥	There are many conflicting parties.
The leadership is moderate	🟦				The leadership is extremist
The conflict is about resources (land, energy, water)				🟥	The conflict is deep-rooted (identity conflict)
The conflict is embedded in a peace-enhancing environment		🟨			The conflict is embedded in a undemocratic environment, where conflict-regulating mechanisms are absent and rule of law is not upheld
The conflict is of short-duration and made relatively few victims.				🟥	The conflict is going on since a long time and made many victims.
The conflict is very symmetric				🟥	The conflict is very asymmetric
Internal commitment to peace is high		🟨			Internal commitment to peace is low

External commitment to and support for peace is high			🟨			External commitment to and support for peace is low
The conflict takes place in a good neighbourhood					🟥	The conflict takes place in a bad neighbourhood

Table 10: Mapping the difficulty of the Israel/Palestine conflict

The Madrid peace process

The first concrete outcome of the newfound willingness for dialogue was the Madrid peace process, named after the opening conference that was held in Madrid from October 30 to November 1, 1991. This new initiative was the result of an intensive Middle East shuttle diplomacy effort by James Baker, US Secretary of State in the Bush Sr. administration. The aim and major challenge of Baker's mission was to break the taboo on direct talks between the various parties involved in the conflict. As Baker expressed it himself: 'One of our strongest points of leverage, with respect to all parties, was the threat to, as I found myself saying all too often, lay the dead cat on their doorstep. No one wanted to accept blame for scuttling the process.'[299] The various parties eventually agreed upon a two-track approach, with a bilateral and a multilateral track.[300] The bilateral negotiations would include direct talks, for the first time ever, between Israel and Syria, Israel and Lebanon, and Israel and Jordan. The multilateral talks would include direct negotiations between Israel and its Arab neighbours in order to address issues of mutual concern.

The Madrid Conference marked a watershed in the Israeli-Arab relations. Israel, Syria, Lebanon, Egypt and a joint Jordanian-Palestinian delegation attended the conference. Israel had specifically asked for such a joint delegation on the Palestinian side. Although officially excluding Palestinians from East Jerusalem and the PLO, it was indeed the latter that appointed the members of the Palestinian delegation nonetheless. Other participants in the conference were the European Community, the USA and the USSR (the latter two co-sponsored the Conference). Representatives from the UN, the Gulf Cooperation Council and the Arab Maghreb Union were present as observers.

The bilateral negotiations began in Washington immediately after the Madrid Opening Conference. On December 10, 1991, the negotiations between Israel

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[299] Baker (1999), p. 188.

[300] This two-track framework was, among other things, the result of differences in opinion on the official name of the conference. The Arab states preferred the label of 'international peace conference', so they could claim that this was the international conference they had sought for so long. Israel, on the other hand, called it a 'regional conference', to emphasise that the conference was nothing more than a number of face-to-face discussions and not the larger international conference they had always opposed. Eventually, the opening conference (and the subsequent peace process) was split into two tracks and was called 'The Peace Conference'. Baker (1999), pp. 188, 193-194.

and Lebanon, and between Israel and Syria commenced. The talks with the Jordanian-Palestinian delegation started one week later. The American government acted as facilitator/mediator in these bilateral talks. The multilateral talks, on the other hand, began at the end of January 1992 in Moscow. Thirty-six parties, including eleven Arab states from the Gulf region and from North Africa, and Israel, but not Syria and Lebanon,[301] attended the opening session. The multilateral talks gathered in five working groups: refugees, water, environment, arms control and regional security, and regional economic development. After the opening session in Moscow several capital cities around the world hosted the further discussions.[302]

The bilateral negotiations soon came to dominate the multilateral talks, however. For Israel these bilateral talks represented a formal recognition of its existence and at the same time a break-up of Arab unity. The Arab states were not dependent on each other for progress in the respective negotiations. The fact that the Palestinians could negotiate directly with Israeli officials was a big achievement for them too. The Palestinians even succeeded in detaching the joint Jordanian-Palestinian delegation and they engaged in direct talks with the Israelis too.

The Madrid peace process and especially the bilateral negotiations between Israelis and Palestinians were doomed to fail, however, due to several specific problems. A first crucial element was the fact that the Palestinians were for a long time part of a joint delegation, which slowed down the negotiations severely. The members of the delegation did not have a real negotiation mandate and it was clear to all the participants, including the Israelis, that behind the scenes the PLO had total control over the negotiations.[303] In fact, it came down to just one man: Yasser Arafat.

Second, the Israeli delegation too did very little to add momentum to the talks. Israel had only reluctantly engaged in the process after all. Although agreed upon at the beginning of the Madrid Conference, the fact that the base-line of the negotiations would consist of UN Security Council Resolutions 242 and 338, which urge Israel to withdraw from the Occupied Territories immediately, was in fact unacceptable to Israel's Prime Minister Shamir. And although the negotiations were intended to bring about a final status agreement, Israel was not yet ready to accept the creation of a Palestinian state in the Occupied Territories. As Shamir himself acknowledged, it was his intention to drag out the negotiations with the Palestinians: 'I would have conducted the autonomy

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[301] These countries have not attended the multilateral discussions as they believed there was not enough progress in the bilateral talks. Egypt also stopped attending the arms control meetings when Israel refused to allow its nuclear programme to be discussed.
[302] Kaye (1997), pp. 171-173
[303] Aggestam (2002), p. 80

negotiations for ten years, and in the meantime we would have reached half a million souls in Judea and Samaria.'[304] A remarkable fact also was that even after the electoral victory of the Labor Party in June 1992, the composition of the Israeli delegation remained the same, as did its vision on the negotiations.[305]

Finally, the intense media attention, especially for the bilateral talks, and recurrent leaks to the press made any progress very difficult. The debates were in fact held in front of the camera and not at the negotiation table. As a result, the negotiation teams were not able to build relations of mutual trust and this seriously hampered the reaching of an agreement.[306]

The Oslo-connection

It was against this background of failing negotiations that the Oslo-connection was established. A pertinent question to ask here is: Why did a relatively small country like Norway, which is after all a minor player on the international political scene, become the host of the secret back channel talks? And even more important: What was so special about the Norwegian approach that it could succeed in an undertaking in which even the most powerful players on the political scene had failed in the past? We will discuss this second issue later on when we focus on Norway's role as facilitator. In this section, we will focus on the question why Norway became the host of the secret meetings.[307]

Compared to other possible mediators in the Israeli-Palestinian conflict, Norway had a substantial advantage. For several decades already it had good relations with both Israel and the Palestinians. Norway had been supportive of Israel ever since its creation in 1948, and from the mid-1970s onwards, direct contact with Arafat and other high-ranking Palestinians had been established too. Furthermore, it was not Norway itself that suggested the possibility of becoming a mediator. Rather, it was the PLO that already more than once during the 1980s had thought of Norway as a possible third-party in the negotiations. Even in 1979, in connection to the Camp David negotiations on the Israeli-Egyptian peace agreement, this possibility was suggested. The fact that Norway was a close ally of Israel was an advantage rather than a disadvantage for the PLO. After all, Norway was a small country, with no important geo-political agenda in the region. Furthermore, Norway maintained good relations with the USA, which in the case of the Middle East conflict is a necessary and important advantage.

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[304] Bannerman (1993), p. 150; Morag (2000), pp. 204-205
[305] Abbas (1995), p. 92
[306] Hendriksen Waage (2000)
[307] The following is based upon: Hendriksen Waage (2000); Corbin (1994), pp. 30-52; Abbas (1995), pp. 96-97, 103-104, 112-114; Egeland (1999), pp. 531-533; Bien (2000), pp. 119-121.

The possibility of a Norwegian back channel to bring the stalled Madrid negotiations back on track was first explored in May 1992, in the heat of the Israeli election campaign. It was then that Terje Rød Larsen, a Norwegian sociologist and founder of the research institute FAFO (Institute for Applied Social Sciences) who was doing research on the living conditions of the Palestinians in the Gaza Strip, discussed the stalemate in the bilateral negotiations with Yossi Beilin, an Israeli member of the Knesset (the Israeli Parliament) who became vice-minister of Foreign Affairs after the Labor Party's victory in the elections of June 1992. Both men agreed that there was a need for a second, secret track of negotiations. With the idea of launching a new initiative, they organized a few secret meetings, in first instance with unofficial representatives from both sides, such as Faisal Husseini, one of the upcoming leaders of the Palestinians in the Occupied Territories and one of the official leaders of the Palestinian delegation in the bilateral talks, and Yair Hirschfeld, a Jewish history professor from the University of Haifa. Later on, they also invited Ahmed Qurei (a.k.a. Abu Ala), the financial expert of the PLO.[308] All of them acknowledged the possible advantages of the new back channel approach. Once the political leaders from both sides gave their permission to start secret negotiations in Norway, the Oslo-connection was established.

Two phases of negotiations

Pre-negotiations

The back channel negotiations were held in Norway from January to August 1993, spread over 13 rounds of discussions. During the pre-negotiations[309], from January till May, the delegations were composed as follows:

The Palestinian delegation was composed of official representatives of the PLO:

- Ahmed Qurei (also present during the establishment of the Oslo-connection);

- Maher El Kurd: economist and representative of Arafat[310];

[308] This last meeting was both for Hirschfeld and Beilin a big risk, as at that moment it was still prohibited by law for Jews to meet with members of the PLO. On January 19, 1993, the day before the first meeting in Oslo, the Israeli parliament voted a law which legalised meetings between Israelis and PLO members. Corbin (1994), p. 57

[309] This part on the pre-negotiations is based on: Gewurz (2000), pp. 187-190; Abbas (1995), pp. 117-141; Egeland (1999), pp. 531-534; Corbin (1994), pp. 57-95.

[310] Towards the end of the negotiations, El Kurd was replaced by Mohammed Abu Koush, a lawyer working for the PLO delegation at the UN in Geneva, where he dealt with economic and social issues. The exact reason for this shift in the Palestinian delegation is not entirely clear. Corbin (1994) assumes that Qurei was not completely satisfied with El Kurd, as he was in the first place loyal to Arafat. Qurei might have

- Hassan Asfour: a Palestinian communist and personal assistant of Mahmoud Abbas (the latter a.k.a. Abu Mazen, the number three of the PLO, who followed the secret meetings together with Arafat from Tunis).

The Israeli delegation was composed of two unofficial representatives:

- Yair Hirschfeld (also present during the establishment of the Oslo-connection);

- Ron Pundak: professor of history at the University of Tel Aviv.

  Shimon Peres, Israeli minister of Foreign Affairs, and his deputy Yossi Beilin followed the meetings from Tel Aviv, while regularly informing Israeli Prime Minister Yitzhak Rabin.

The Norwegian facilitation team consisted of:

- Terje Rød Larsen (also present during the establishment of the Oslo-connection);

- Mona Juul: Terje Rød Larsen's wife and a Norwegian diplomat;

- Thorvald Stoltenberg: the Norwegian minister of Foreign Affairs who on April 2, 1993, was succeeded by Johan Jørgen Holst;

- Jan Egeland: vice-minister of Foreign Affairs.[311]

In order to preserve the secrecy of the talks, 'conferences' organized by FAFO served as covers for the actual negotiations. In this way, all the parties would be able to deny the existence of direct talks and explain the meetings in terms of academic gatherings.

Pre-negotiations are defined by Gewurz as 'usually secret, informal contacts between parties which provide them with the opportunity to move beyond various psychological and practical obstacles in the way of formal negotiations. They serve as a low-risk 'learning process' in which the parties can clarify misperceptions and stereotypes about one another, evaluate risks and chances for success, while jointly addressing alternatives and potential structures of the formal negotiations. They also test the viability of a negotiation approach, helping it to gain acceptance within the mainstream of government decision-making.'[312] In other words, through such a process, the parties got to understand each other's needs, interests and expectations.

During these introductory rounds of negotiations, the two parties succeeded in drafting a first version of a Declaration of Principles. The principles included in

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felt that El Kurd could undermine his position, as there existed some differences in opinion. Corbin (1994), pp. 117, 129

[311] Through the course of the meetings they received assistance from Marianne Heiberg, Holst's wife and academic colleague of Larsen, and Even Aas and Geir Pederson, trusted members of FAFO.

[312] Gewurz (2000), pp. 181-182

this document (referred to as the Sarpsborg document, named after the town where the meeting took place) were, amongst others, the important notion of a simultaneous withdrawal from (parts of) the Gaza Strip and the Jericho area, the gradual transfer of power to a Palestinian Authority (PA), and economic cooperation. Important also was the absence of any reference to an independent Palestinian state.

Especially the first principle of a simultaneous withdrawal from the Gaza Strip and the Jericho area was crucial. In first instance, the delegations focused on the withdrawal from the Gaza Strip. Later on, the Palestinian delegation, on demand of Arafat, also brought up the issue of a simultaneous withdrawal from Jericho. Jericho is a historically important city for the Palestinians on the West Bank. It was considered very suitable for a transfer of power, because very few Israeli settlements were situated there, and because of its proximity to Jordan, with which Israel hoped the Palestinian Authority would establish close links. The inclusion of Jericho in the agreement was asked for by the Palestinians, as in this way they wanted to divert the risk that the Gaza Strip would turn out to be the only piece of land from which the Israelis would withdraw. The Israeli delegation accepted this proposal in principle.

Official negotiations

An element that bothered the Palestinians a lot during the pre-negotiations was the unofficial nature of the Israeli delegation and the resulting uncertainty about top-level Israeli involvement. As Zartman (1997) described it: '[W]hen the delegations themselves have different statuses, not only is the normal process disrupted but procedural concerns over the status of the parties tend to take precedence over the substance of negotiations and to dominate the exchange.'[313] The Palestinians wanted to avoid the risk of investing a lot of time and energy in the talks, if they were not sure of Israeli involvement at the highest level. Repeatedly, therefore, they asked for an official Israeli delegation. They did not know, however, that Peres had regularly informed Prime Minister Rabin about the progress made in the secret talks. At first, Rabin remained sceptical about the Oslo back channel and was primarily focused on the bilateral talks in Washington. What was important, however, was that Rabin had never prevented the Israeli delegation from going to Oslo.

From the sixth round of talks on, end-May 1993, Rabin decided to upgrade the Israeli government's delegation. Uri Savir, the newly-appointed Director-General of the Israeli Foreign Ministry, was added to the delegation and he would serve as the new lead negotiator. In the beginning of June, Joel Singer, a former colonel of the Israeli army and a successful lawyer, joined the negotiation team in order to assure that the document that was being produced was legally correct. The fact that Israel was now willing to initiate direct and official talks with the PLO was seen as a major breakthrough by the Palestinian
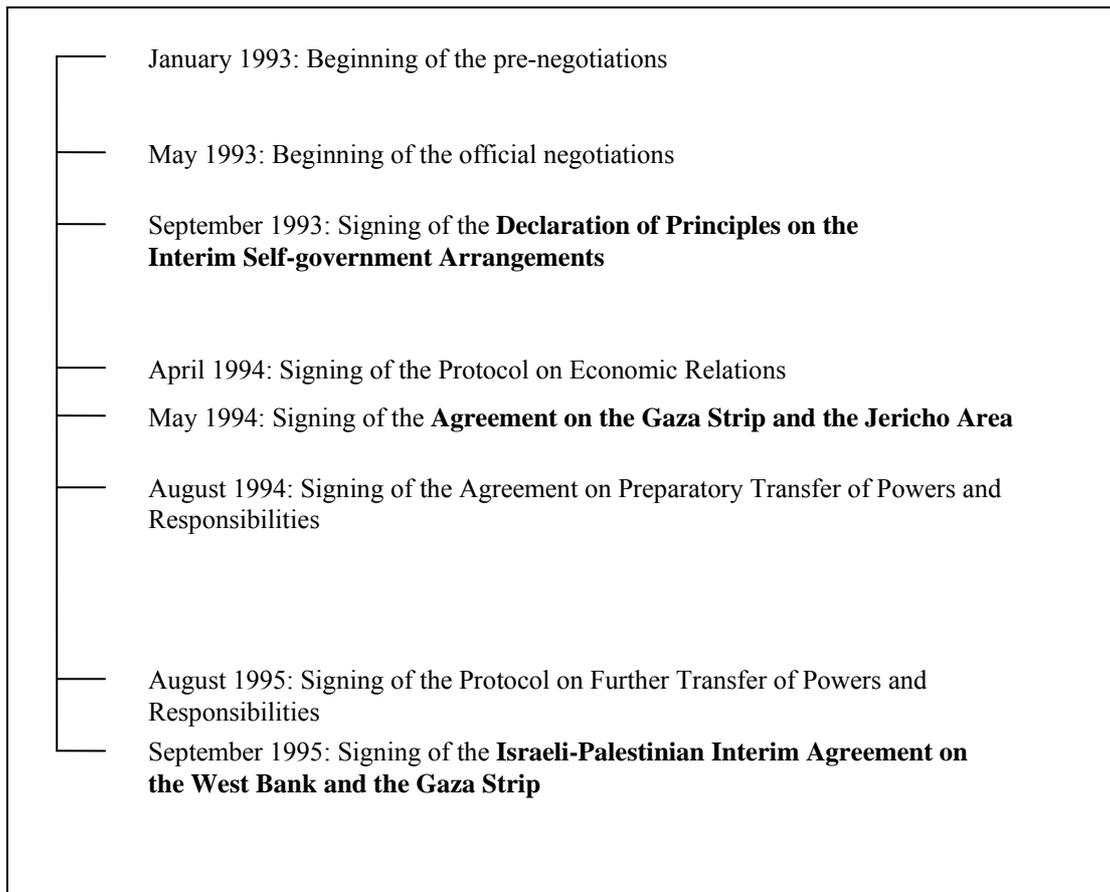
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[313] Zartman (1997), p. 199

leadership. After all, this signified the de facto recognition of the PLO as the legitimate representative of the Palestinians.

During the various rounds of official negotiations, agreement was reached on several issues that were later included in the DOP. Both parties wanted and in fact highly needed such an agreement. For Israel, it was important to assure its security and to support the PLO as a counterweight to Hamas in the Occupied Territories. The weakened PLO was considered a good partner, as it had become clear that the Palestinian delegation in the bilateral negotiations was powerless. The PLO, on the other hand, was desperately seeking international recognition. The organization was financially and organizationally weakened and needed this recognition to become a credible counterweight to Hamas again, and to legitimize its status as leading organization of the Palestinian people.

The negotiations in Oslo finally produced what is now known as the Declaration of Principles on the Interim Self-government Arrangements (DOP). Consensus on this final text was reached in the early morning of August 18, 1993, after long and sometimes hard discussions. Some two weeks later, both parties also reached an agreement on letters for mutual recognition (see below). During the following two years, five more agreements were signed, of which we will discuss only two in this chapter. In May 1994, the Agreement on the Gaza Strip and the Jericho Area was signed as a first implementation agreement. In April of that same year, the two parties had already signed a Protocol on Economic Relations, which was included in the Agreement on the Gaza Strip and the Jericho area. In August 1994, the Agreement on Preparatory Transfer of Powers and Responsibilities, and in August 1995, the Protocol on Further Transfer of Powers and Responsibilities were signed as implementation agreements of the Agreement on the Gaza Strip and the Jericho area. Finally, in September 1995, the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (or Oslo II Agreement), was signed. This agreement superseded all the ones signed after the DOP. In the following parts of this chapter, we will focus on the content of the three most important Oslo Agreements: the DOP, the Agreement on the Gaza Strip and the Jericho area, and the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip.

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        ┌──    January 1993: Beginning of the pre-negotiations


        ├──    May 1993: Beginning of the official negotiations


        ├──    September 1993: Signing of the Declaration of Principles on the
        │      Interim Self-government Arrangements


        ├──    April 1994: Signing of the Protocol on Economic Relations

        ├──    May 1994: Signing of the Agreement on the Gaza Strip and the Jericho Area


        ├──    August 1994: Signing of the Agreement on Preparatory Transfer of Powers and
        │      Responsibilities



        ├──    August 1995: Signing of the Protocol on Further Transfer of Powers and
        │      Responsibilities
        └──    September 1995: Signing of the Israeli-Palestinian Interim Agreement on
               the West Bank and the Gaza Strip
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Figure 4: Time line of the Oslo back channel negotiations and their outcomes

The Declaration of Principles on the Interim Self-government Arrangements (September 13, 1993)

On Monday September 13, 1993, the Declaration of Principles on the Self-government Arrangements was signed. The ceremony took place on the lawn of the White House. Although the Agreement was the result of the tremendous efforts of the Norwegian team, President Clinton was given the honour to lead the ceremony in the presence of all the main protagonists of the Oslo-connection and some 3,000 international dignitaries. The signing of the DOP was sealed by the historical handshake of Arafat and Rabin, the former with a big smile and very enthusiastically, the latter rather reluctantly and without expressing any emotion. It was clear that it was a handshake of friendship between enemies.

As its name already suggests, the DOP was not a full-blown peace treaty, in which all the difficult issues were dealt with. It was more a framework for future negotiations on Palestinian self-government and to that extent it provided a timetable for the following five years. The DOP actually consisted of two parts. The first part was composed of three letters, two of which dealt with mutual recognition between Israel and the PLO. The second part was the Declaration itself. This second part was the most visible and most discussed part of the Agreement, but the exchange of letters of mutual recognition was essential. Although during the negotiations a consensus on the Agreement was

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reached before the letters of mutual recognition were discussed, this consensus would not have been possible without prior assurance of mutual recognition.

The letters are all dated on September 9, 1993, although Rabin signed his one on September 10. In his letter to Rabin, Arafat declared that the 'PLO recognizes the right of the State of Israel to exist' and that the 'signing of the Declaration of Principles marks a new era in the history of the Middle East.' He then confirmed that the PLO would accept UN Security Council Resolutions 242 and 338, that 'all outstanding issues relating to permanent status will be resolved through negotiations', that the PLO 'renounces the use of terrorism and other acts of violence', and that those articles in the Palestinian Covenant that were inconsistent with the commitments of the letter (including the article that denies Israel's right to exist) would be adjusted. In his letter to the Norwegian Foreign Minister Holst, Arafat called upon the people of the West Bank and the Gaza Strip to end the Intifada. He did not state it in these exact wordings, as this was too sensitive, but he rather urged the people of the West Bank and the Gaza Strip 'to take part in the steps leading to the normalization of life, rejecting violence and terrorism, contributing to peace and stability and participating actively in shaping reconstruction, economic development and cooperation', which de facto of course meant the ending of the Intifada. In his one sentence response to Arafat's letter, Rabin only recognized 'the PLO as the representative of the Palestinian people' and stated that Israel would 'commence negotiations with the PLO within the Middle East peace process.' The latter formulation was rather strange, as the DOP was in fact the result of negotiations between the two parties.

The main aim of the DOP was the establishment of a Palestinian Interim Self-government Authority (the Council) for the Palestinian people in the West Bank and the Gaza Strip. The Council would be elected through direct, free and general elections. The jurisdiction of the Council would cover 'West Bank and Gaza Strip territory, except for the issues that will be negotiated in the permanent status negotiations' (Art. IV). What was lacking in the DOP, however, was a clear definition of the term 'West Bank', and in this way, it was not made clear whether East Jerusalem and its annexed suburbs were considered part of the West Bank or not.

The permanent status issues were further defined in Art. V.3 as the 'remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbours, and other issues of common interest.' Furthermore, negotiations on the permanent status would lead to the implementation of Security Council Resolutions 242 and 338. These permanent status negotiations were to 'commence as soon as possible, but not later than the beginning of the third year of the interim period' (Art. V.2). This interim period would last for five year and would 'begin upon the withdrawal from the Gaza Strip and Jericho area' (Art. V.1).

Art. V.3 is the only place in the Agreement where the permanent status issues are listed. Although the Israelis had always rejected to even name Jerusalem in the DOP, the fact that it was included meant that East Jerusalem was a topic of discussion and this was an important achievement for the Palestinians. No clear definitions were provided, however, on what the issues exactly covered. Which borders were referred to? And which refugees, those of 1948 and/or 1967? In the DOP, only the 1967 refugees were referred to at the exclusion of the 1948 refugees. The list of permanent status issues, however, did not exclude the latter from being included in the discussions on the permanent status.

The DOP further stated that an agreement on the withdrawal of Israeli military forces from the Gaza Strip and the Jericho area had to be reached within two months from the date of entry into force of the DOP. In addition to the withdrawal, there would also be a redeployment of Israeli forces in the West Bank and the Gaza Strip, for which Israel would be 'guided by the principle that its military forces should be redeployed outside populated areas' (Art. XIII.2). The latter of course does not necessarily mean that this would also be the case in reality, as the Israeli army would only be 'guided by the principle'.[314] Furthermore, no time schedule for the redeployment was included in the DOP.

Once the withdrawal of the Israeli forces would have started, authority in the spheres of education and culture, health, social welfare, direct taxation, and tourism would be transferred to the 'authorized Palestinians', i.e. the PLO, until the Council would have been elected (Art. VI). This partial self-government would involve only the Gaza Strip and the Jericho area, and thus not the entire West Bank. Furthermore, an Interim Agreement had to be concluded (which happened in 1995), in which the structure of the Council, the number of its members, the transfer of powers and responsibilities, the Council's executive and legislative authority, and the independent Palestinian judicial organs would be discussed. According to Drake (1994), however, the legislative authority of the Council was already limited by Art. IX. The fact that this article was titled 'Laws and Military Orders' instead of 'Legislative authority of the Council' (as Drake suggests), and the fact that it declared that the 'Council will be empowered to legislate (…) within all authorities transferred to it', but that '[b]oth parties will review jointly laws and military orders presently in force in remaining spheres', implied that the legislative authority of the Council would be exercised within the framework of the military laws that were in force in the

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[314] Drake (1994), p. 15. It must be noted here that Drake uses the term 'Gaza-Jericho agreement' to refer to the DOP. In this paper, however, we will use the term 'Gaza-Jericho agreement' for the agreement signed on May 4, 1994, which is officially called the 'Agreement on the Gaza Strip and the Jericho area'.

spheres excluded from Palestinian authority.[315] Moreover, as Dajani (1994) argues, Israel would have a veto in changing these laws and orders.[316]

Security largely remained an Israeli responsibility. Art. VIII stated that '[i]n order to guarantee public order and internal security for the Palestinians of the West Bank and the Gaza Strip, the Council will establish a strong police force, while Israel will continue to carry the responsibility for defending against external threats as well as the responsibility for overall security of Israelis'. This meant that although the Palestinian police force would be established for the entire West Bank, it was clear that it would not operate in East Jerusalem and that it would have only limited authority within the Occupied Territories.

The DOP also provided the framework for coordination and cooperation between Israelis and Palestinians on a large number of issues: 'In order to provide for a smooth implementation of this Declaration of Principles and any subsequent agreements (…), a Joint Israeli-Palestinian Liaison Committee will be established in order to deal with issues requiring coordination, [and] other issues of common interest' (Art. X). This Liaison Committee would function as the head of all other joint committees that were to be established. An Israeli-Palestinian Committee for Economic Cooperation would be set up to deal with a large number of economic issues, such as water, electricity, transport and communications, trade, and industry (Annex III). Even a programme for cooperation in social welfare issues had to be established, although this was one of the five spheres in which authority would be transferred to the Palestinians. Furthermore, a development plan for the West Bank and the Gaza Strip, on the one hand, and for the entire region, on the other hand, would be established (Annex IV). Finally, a continuing committee, in which the governments of Egypt and Jordan would participate, had to be set up in order to establish further liaison and cooperation arrangements (Art. XII).

Both Drake (1994) and Dajani (1994) are quite sceptical about all these committees for 'cooperation and coordination'. According to Drake: 'Taken together, they incorporate almost every element of the Palestinian entity's economy, its foreign relations, its Arab relations and its internal police and intelligence functions into the realm of 'cooperation and coordination'.'[317] With respect to economic relations, almost every policy area was put under the heading of cooperation instead of under Palestinian authority. As Drake argued, the cooperation would involve policy domains that could be dealt with by the Palestinians themselves, with the help of international aid perhaps, but certainly without the interference of the Israelis.[318] Real economic powers and responsibilities would lie in all these committees. This could hamper the

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[315] *ibid*, p. 9
[316] Dajani (1994), p. 14
[317] Drake (1994), p. 12
[318] *ibid*, pp. 24-26

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development of a strong Palestinian Authority and entity, as according to Drake, '[i]n situations of extreme power imbalance, the concept of joint authority gets translated in real terms into the authority of the stronger power in the partnership.'[319] And in Dajani's opinion, '[t]he most striking thing about the committees is that they will apparently function over the head of the self-governing authority. It is in their hands that real authority will lie; important decisions will be channelled through them. They are at the apex of the pyramidal structure in the DOP, covering all areas in which authority has not been relegated to the Council. In effect, the Council, with its five authorities, remains a largely ceremonial body, a façade of honorifics.'[320] Concerning foreign relations, finally, it is particularly remarkable that in Art. XII it is stated that the 'two parties will invite the governments of Jordan and Egypt to participate in establishing further liaison and cooperation arrangements between the Government of Israel and the Palestinian representatives, on the one hand, and the Governments of Jordan and Egypt, on the other hand.' The question Drake rightly posed is why the Palestinians are on the same 'hand' as Israel? This seems to exclude every kind of foreign relations between the Palestinian Council and other states.

Finally, the DOP also provided a mechanism to resolve disputes that might arise from the application or interpretation of the DOP or any subsequent agreement (Art. XV). During the interim period, disputes would be resolved by the Joint Liaison Committee. Disputes that could not be settled in this way would be resolved by a mechanism of conciliation. Only in the last instance could the dispute be submitted to arbitration and the parties would have to agree on the establishment of an Arbitration Committee. During the negotiations in Oslo, the Palestinians had always emphasized their desire for an arbitration body, while the Israelis had opposed this until the very last moment. A compromise was found in Art. XV. Especially for Israel it was important that only last instance disputes would be submitted to an arbitration body, as in the past this type of dispute settlement had already ruled against the case of Israel in several instances.[321] However, one can also argue, as Drake (1994) did, that because Art. XV states that both parties would have to agree upon the mechanism of conciliation and the Arbitration Committee, both parties in fact would have a veto on this issue. Furthermore, the fact that the Arbitration Committee had to be 'established' by the parties meant that such a body would be made up of Israelis and Palestinians, rather than of outside and neutral individuals. According to Drake, this could be an advantage for Israel because of the power imbalance between the two parties.[322]

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[319] *ibid*, p. 13
[320] Dajani (1994), p. 13
[321] For an example, see: Dajani (1994), pp. 18, 22
[322] Drake (1994), pp. 16-17

The DOP was ratified by the Israeli Knesset on September 23, 1993, by a vote of 61 to 50 with 8 abstentions. The PLO in Tunis approved the Agreement on October 11, 1993, by a vote of 63 to 8 with 9 abstentions.[323] Although the DOP represented a sign of peace and hope for a better future, the violence did not stop after its signing. The spiral of violence was very hard to break and seriously hampered the negotiations on the implementation agreements and also led to a temporary interruption of the multilateral talks.[324]

The Agreement on the Gaza Strip and the Jericho Area (May 4, 1994)

On May 4, 1994, almost eight months after the signing of the DOP and five months later than foreseen, the Agreement on the Gaza Strip and the Jericho Area (hereinafter the Gaza-Jericho Agreement) was signed in Cairo, Egypt. It provided a detailed description of the implementation of the main articles of the DOP which would apply to the Gaza Strip and the Jericho area only. As a result of the delay, the five-year interim period could only begin on the day the Gaza-Jericho Agreement was signed (May 4, 1994) and it would lead until May 4, 1999. The permanent status negotiations had to begin no later than May 4, 1996.

The Agreement dealt with five important issues. The first one was security. The withdrawal and redeployment of Israeli military forces would begin immediately after the signing of the Agreement. Furthermore, external and overall security would remain the responsibility of Israel, while at the same time a Palestinian police force would be put in place.

The second important issue concerned the establishment of the Palestinian Authority (PA) and the transfer of powers. Within its jurisdiction, the PA would have legislative and executive powers and would administer justice through an independent judiciary. In 38 spheres[325] authority would be transferred to the PA and the transfer had to be completed within three weeks from the signing of the Agreement. In some spheres, powers and responsibilities were transferred completely, in others a clear description was provided of what the Palestinian authority would encompass.[326] The Israelis

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[323] Watson (2000), p. 42. Important to know is that it was the PLO Central Committee that approved the DOP. The Palestine National Council, in fact the most important organ, was not convened and therefore did not give its approval. Milton-Edwards (1996), p. 208.

[324] See: 'Chronology, 16 August-15 November 1993' in *Journal of Palestine Studies,* (1994), Vol. 23, No. 2, pp. 160-179; 'Chronology, 16 November 1993-15 February 1994' in *Journal of Palestine Studies,* (1994), Vol. 23, No. 3, pp. 162-182; 'Chronology, 16 February-15 May 1994' in *Journal of Palestine Studies,* (1994), Vol. 23, No. 4, pp. 154-175.

[325] See Gaza-Jericho Agreement, Annex II.

[326] According to Shehadeh (1994), in some spheres, such as water and land, the status-quo was preserved and the Agreement did not afford the Palestinians more control than they enjoyed before the Agreement. Shehadeh (1994), pp. 20-22

would be able to request a Legislation Subcommittee to assess whether the legislation exceeded the jurisdiction of the PA.

The third important part of the Agreement dealt with economic issues. The Protocol on Economic Relations elaborated on the financial competencies of the PA and the cooperation between both sides in various policy domains which were to be transferred. An independent Palestinian Monetary Authority would be established and the possibility of introducing a Palestinian currency was also provided.

Fourth, the Gaza-Jericho Agreement confirmed the dispute settlement mechanism that was set up in the DOP, but added an extra step. Before the provisions of DOP Art. XV would be applicable, the disputes would first be referred to 'the appropriate coordination and cooperation mechanisms established under this Agreement'.[327]

Finally, the Agreement provided some confidence-building measures. Art XX.1 stated that 'Israel will release, or turn over, to the Palestinian Authority within a period of 5 weeks, about 5000 Palestinian detainees and prisoners, residents of the West Bank and the Gaza Strip.' The release of additional Palestinian prisoners would be the subject of further negotiations. Furthermore, both sides agreed to 'take all measures necessary in order to prevent acts of terrorism, crime and hostilities directed against each other, against individuals falling under the other's authority and against their property, and shall take legal measures against offenders' (Art. XVIII).

Shortly after the signing of the Agreement, the Israeli army did indeed start with the withdrawal of its forces. On May 10, the Palestinian police entered the Gaza Strip from Egypt and two days later also Jericho. On May 18, the last Israeli troops left the Palestinian areas of the Gaza Strip. On July 1, 1994, Arafat returned to the Gaza Strip after 27 years of exile. He was welcomed as a hero by tens of thousands of Palestinians.[328]

The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (September 28, 1995)

The next important step in the implementation of the DOP was the signing of the Interim Agreement, as it was anticipated in DOP Art. VII. This agreement is also known as the Oslo II Agreement, as it was the most important agreement signed after the DOP and as it applied to the Gaza Strip and the whole of the West Bank. As such, the Interim Agreement superseded the previous agreements, to know the Gaza-Jericho Agreement and the two agreements on the preparatory and the further transfer of powers and responsibilities. A lot of the arrangements of these superseded agreements, however, were reiterated in the Interim Agreement, especially those on general

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[327] Gaza-Jericho Agreement, Art. XVII.
[328] Watson (2000), p. 43; 'Chronology, 16 February-15 May 1994,'o.c., pp. 154-175; 'Chronology, 16 May-15 August 1994,' o.c., pp. 152-174.

security arrangements, on economic relations, and on cooperation, both between Israel and the Palestinians, and between them and other states. Watson made an appropriate comparison in this respect: 'The relationship of the Declaration [of Principles] to the Interim Agreement in some ways mirrors that of the US Declaration of Independence to the US Constitution: in each case the earlier document announcing a dramatic shift in policy was more dramatic, but the latter, more detailed, instrument – the one that detailed how the new polity will be governed – was more important legally.'[329]

Four main elements are discussed in the Interim Agreement. First of all, a new and more detailed timetable for the redeployment[330] of Israeli military forces was provided. The redeployment would occur in four phases, to be completed within nearly two years.[331]

Second, the Interim Agreement established some important organs of Palestinian self-government. The Palestinians would be able to elect in 'direct, free and general elections' the Council and the 'Ra'ees' (President or Chairman)[332] of the Executive Authority. They would be elected for a transitional period not exceeding five years from the signing of the Gaza-Jericho Agreement. Palestinians of Jerusalem would be able to participate in the elections. The Council would possess legislative, judicial and executive powers. The executive power would be exercised by a committee (the Executive Authority), most of which members would be members of the Council. The Ra'ees would be the head of the Executive Authority. Pending the inauguration of the Council, the powers and responsibilities transferred to the Council would be exercised by the PA, which was established by the Gaza-Jericho Agreement. The legislative powers would include both primary legislation (Council) and secondary legislation (Ra'ees). As in the Gaza-Jericho Agreement, the Israelis would be able to bring to the attention of the Legal

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[329] Watson (2000), p. 44.

[330] Contrary to the previous Agreements, the Interim Agreement does no longer refer to the 'withdrawal' of Israeli military forces, but only to the more limited term 'redeployment'.

[331] The first phase would cover 'populated areas in the West Bank' (Art. X) and would be completed 22 days before the day of the Palestinian elections. This first phase would commence 10 days after the signing of the Agreement and would be completed in all areas but the city of Hebron by the end of December 1995. In Hebron, the redeployment would be completed six months after the signing of the Agreement (Annex I Art. I and Appendix 1.A). The remaining three phases, the so-called 'further redeployments', each to take place after an interval of six months, had to commence after the inauguration of the elected Palestinian Council and had to be concluded within 18 months (Annex I Art. I.9). The 'specified military locations', to which the redeployments would occur, would be determined in the further redeployment phases and would be negotiated in the permanent status talks (Annex I Art. I.10).

[332] The Arabic term 'Ra'ees' was chosen as a compromise term. The Palestinians preferred the term 'President'. The Israelis, however, could not agree with this and preferred the term 'Chairman', as this would not so clearly refer to a head of state. As a compromise, the Arabic term 'Ra'ees' was chosen, as it can be translated either way. Watson (2000), p. 45

Committee the Palestinian legislation they believed would be in violation of the Interim Agreement, the DOP or other agreements.

Third, 'West Bank and Gaza Strip territory, except for issues that will be negotiated in the permanent status negotiations, will come under the jurisdiction of the Palestinian Council in a phased manner, to be completed within 18 months from the date of the inauguration of the Council' (Art XI.2). To this extent, the Interim Agreement divided the West Bank into three areas, each with varying degrees of Israeli and Palestinian authority with respect to civil and security issues.[333] Annex III provided an overview of the various civil affairs that would be transferred to the Council. Most of these spheres were the same as those mentioned in the Gaza-Jericho Agreement, although some new ones were added.[334]

Fourth, the Protocol concerning elections (Annex II) was the election agreement that was anticipated in the DOP. It was a detailed agreement on the general conditions of voters, candidates and the election campaign. Although normally an expression of sovereignty, these arrangements were the result of negotiations between the Palestinians and the Israelis. For certain issues, this allowed for Israeli interference, for example concerning voters and candidates.

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[333] Area A (approximately 17% of the West Bank) would consist of seven major Palestinian towns: Jenin, Qalqilya, Tulkarem, Nablus, Ramallah, Bethlehem, and Hebron. Special guidelines for Hebron are outlined in Annex I Art. VII. The redeployment of Israeli troops would not apply to places and roads where arrangements would be necessary for the security and protection of Israelis and their movements. In the area of the city from which the troops would not redeploy, Israel would retain all powers and responsibilities for internal security and public order. In this area, the civil powers and responsibilities would be transferred to the Council, except for those relating to Israelis and their property. Area B (approximately 24% of the West Bank) would comprise all other Palestinian population centres. Area C (approximately 59% of the West Bank) would include all Israeli settlements, military bases and areas, and state lands. The land of Area A would come under the jurisdiction of the Council during the first phase of redeployment and all civil powers and responsibilities would be transferred to the Council during this phase (Art. XI.2.a, b). Upon the completion of the redeployment of Israeli military forces, the Council would assume the powers and responsibilities for internal security and public order (Art. XIII.1). Area B would differ from Area A only with respect to the security arrangements. After the redeployment, the Council would be responsible for public order for Palestinians. Israel would have the overriding responsibility for security (Art. XIII.2.a). The transfer of internal security responsibility would take place during the further redeployments in three phases, 'except for the issues of permanent status negotiations and of Israel's overall responsibility for Israelis and borders' (Art. XIII.2.b.8). In Area C, civil powers and responsibilities not related to territory would be transferred to the Council during the first phase of redeployment (Art. XI.2.c). During the further redeployment phases, powers relating to territory would be gradually transferred, except for the issues that would be negotiated in the permanent status negotiations (Art. XI.2.e). With respect to security, the responsibility for internal security would be transferred gradually in three phases, 'except for the issues of permanent status negotiations and of Israel's overall responsibility for Israelis and borders' (Art. XIII.2.b.8). Concerning security in the whole of the West Bank and the Gaza Strip, 'Israel shall continue to carry the responsibility for defence against external threats (…) as well as the responsibility for overall security of Israelis and Settlements, for the purpose of safeguarding their internal security and public order' (Art. XII.1).
[334] Additional spheres included banking and monetary issues, culture, forests, fuel, local government, and quarries and mines. While the Gaza-Jericho Agreement dealt with 'religious affairs', the Interim Agreement only dealt with 'religious sites', which is much narrower.

B. Analysis of the Oslo peace process

In the previous parts of this chapter, we have given an extended description of the context of the negotiations, the negotiation process and the content of the Oslo Agreements. In the remaining parts, we will analyze the negotiation process, the agreements, and the implementation measures provided in the agreements. This will help us in identifying the most critical elements of the failure of the peace process.

1. The negotiation process

Symmetry – Asymmetry

Focusing on the situation as it was in 1993, it is clear that in terms of power, be it political, economic or military power, the conflict was an asymmetric one in favour of Israel.[335] Politically speaking, it was a struggle between a state and non-state actors (PLO, Hamas, …), or more accurately, between a state and a people. Israel received active political support from the USA, while the Palestinians were backed by less-powerful Arab states and also the USSR/Russia, but in a less active way.

In demographic terms, Israel was also the stronger power. In 1993, Israel's population numbered around 4.748.000. This number included 102.000 Jewish settlers in the West Bank, 14.000 in the Israeli-occupied Golan Heights, 4.000 in the Gaza Strip, and 134.000 in East Jerusalem. The Palestinian population numbered around 2.1 million in total (around 1.414.000 in the West Bank and around 681.000 in the Gaza Strip [on not more than 380 km² and with an annual growth rate of 3.6%]). The annual population growth rate of the Palestinians, however, is much larger than the Israeli one, which means that they could become the majority of the population in the future.

In economic terms, the asymmetry is enormous. The Palestinian economy was in a very bad condition in the beginning of the 1990s. The Intifada, Israeli security and closure measures, and the Gulf War all had negative effects on the Palestinian economy. In 1991, the unemployment rate had risen to 15% as a result of the increasing inability for Palestinians to work in Israel as well as in the Gulf states. Export revenues had dropped as a result of declining markets in Jordan and the Gulf states in the aftermath of the war. GDP per capita was $2.050 (PPP) in the West Bank (with a real growth rate of –7% [1991 est.]) and $1.275 (PPP) in the Gaza Strip (with a real growth rate of 1% [1991 est.]), compared to a GDP per capita of $13.350 (PPP) in Israel (with a real growth rate of 3.5% [1993 est.]).

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[335] All the figures in this part are taken from: CIA, *World Factbook 1993*, CIA, *World Factbook 1994*.

Finally, in terms of military power, the asymmetry is even larger. The Israeli army is a well-equipped, high-tech army, which receives large support from the USA. Moreover, Israel is a nuclear power. The defence expenditures in 1993 totalled 18% of its GDP. The Palestinians, on the other hand, did not even have an army. To defend themselves they could rely only on illegal arms, terrorist attacks, and ultimately rocks, stones and their own bodies. Therefore, we can argue that asymmetry existed concerning the strategies that were used: Israel used a direct strategy with conventional armed forces, while the Palestinians used an indirect one, focusing on unconventional warfare.[336]

With respect to the issues at stake, asymmetry also existed. This can be explained in terms of the interests and needs that were involved for both parties.[337] For Israel, their interests referred to the continuation of their control over parts of the Occupied Territories, especially Jerusalem, and to the security of Israelis in general and of the Jewish settlements and the Israelis living there. Their needs referred to the very existence of the state of Israel and its recognition as the true homeland of the Jews. For the Palestinians at large, on the other hand, the interests concerned the recapture of control over the land that was once theirs, the establishment of Jerusalem as their capital, and certain economic concerns, such as access to water or jobs. The Palestinians' political needs referred to the recognition of the Palestinians as a people with the right to have a homeland and an independent sovereign state. The interests and needs at stake for the PLO were slightly different. The interests referred, among other things, to the recapture of power in the Territories, at the expense of Hamas and other radical groups, and the survival of the organization in a time of financial crisis. Its needs were for status improvement and recognition as the true representative of the Palestinian people, and thereby a true negotiation party. For both parties, therefore, the need to survive and to be recognized was essentially part of the conflict, and as a result, it seems legitimate to argue that symmetry existed at the macro-level. However, the fact that Palestinian human security was undeniably lower than Israeli made the conflict asymmetrical at the micro-level.

The question that remains now is whether the asymmetry of the conflict had any influence on the negotiation process. It seems that the answer is yes. By the end of 1992, both parties had expressed their willingness to engage in direct negotiations with the aim of reaching an agreement, no matter how limited. Both parties wanted and in fact needed such an agreement, as explained above. The nature of the negotiations, however, brought about several asymmetries. In the first place, the distinction between the pre-negotiations and the official

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[336] For more information on the difference between direct and indirect strategies, see Arreguín-Toft, (2001), pp. 93-128.

[337] Interests refer to scarce resources (such as power, territory, etc.), which can be negotiated, bargained and traded. Needs, on the other hand, are of a more ideational nature (such as recognition or dignity) and they cannot be traded and bargained.

negotiations resulted in a clear asymmetry. The Palestinians had immediately delegated official representatives, while the Israeli delegation was an unofficial one until the sixth round of negotiations. The Israeli government was able to get away with this because it was the stronger party. The Israelis considered Oslo to be a possible, but certainly not the only channel and they wanted to assess first whether the PLO was serious. The PLO, on the other hand, immediately sensed that only the Oslo negotiations would be able to deliver the agreement that was needed. In fact, for the PLO, Oslo was the only channel it had, as it was, at least formally, excluded from the Madrid process. Furthermore, Israel used the fact that it was the stronger party to determine (to a certain extent) the issues that were discussed in Oslo. The Israelis vehemently refused to discuss the now-known permanent status issues. Furthermore, Israel used the proposal of mutual recognition as a means of appeasing the Palestinians on some sensitive issues.

Despite these asymmetries or the use of the conflict asymmetries during the negotiations, the Norwegian team never addressed these asymmetric relationships. As such, it clearly fulfilled its role as a non-partial facilitator. The team focused explicitly on the equal treatment of the two delegations, although these were not inter-state negotiations. As a result, the conflict asymmetries surfaced from time to time.

Inclusive – exclusive process

An important question when engaging in peace negotiations is whether or not to include the radicals. For a long time, the PLO was an unacceptable negotiation partner for the Israeli government. By 1993, this exclusion had proven to be ineffective. Nevertheless, the same logic of exclusion was also used for the Oslo negotiations. Only the Israeli government and the PLO were involved. Radicals from both sides were excluded, as were the peace movements. Furthermore, the Palestinian leaders from the West Bank, making up the official Palestinian delegation in the bilateral talks, were not included. As a result of this exclusiveness, only representatives from the political elite participated. Hirschfeld and Pundak were the only exceptions: unofficial, middle level delegation members who were pushed into the role of backbencher once Singer and Savir joined the delegation. The exclusiveness of the Oslo talks can be referred to as a very important element in the failure of the peace process. While in 1993 it might not have been possible to include all the relevant stakeholders in the negotiations, it would have been beneficial for the wider peace process to include not only the PLO but also other possible spoilers.

The reason for this exclusiveness can be found in the failure to produce an agreement in the bilateral negotiations. The PLO's total control over the Palestinian delegation in Washington produced a deadlock and showed that the PLO was the only true representative of the Palestinians, or at least the one that

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had the power to influence the official delegation. The PLO was not willing to cooperate until it was fully recognized as a participant in the negotiations. On the other hand, Rabin and Peres also quickly realized that it would be particularly favourable to reach an agreement with the PLO only, as a result of the organization's weaker position at the time.

Effective – ineffective process

Before the negotiations in Oslo began, a lot of valuable time was already wasted in the bilateral negotiations. By the end of 1992, one year after the start of the Madrid peace process and the establishment of the Oslo connection, the bilateral talks were at a complete deadlock. However, without this bilateral failure, there might never have been any direct negotiations.

In Oslo, the delegations were able to limit the number of meetings in which absolutely no progress was made: after 13 rounds of negotiations, each lasting only a couple of days, the final agreement was reached. The Norwegian Ministry of Foreign Affairs arranged and funded the accommodations. The effectiveness of the Oslo negotiations resulted both from the constructive personal relations between the actors involved and the type of process used. The former element will be discussed below. Here, we will focus on the effectiveness of the process.

First of all, the importance attached to the pre-negotiations was a crucial element in the process. The basis of the whole process was the creation of mutual relations of trust and the attempt to dismantle stereotypes and misperceptions. As a result, the delegations were able to agree on a preliminary draft agreement, the so-called Sarpsborg document, which would serve as a point of reference throughout the whole process.

Second, this first draft was only possible because of the specific atmosphere of the first meetings, which is often referred to as the 'spirit of Oslo'.[338] This atmosphere not only refers to the constructive relations between the main protagonists, but also to the fact that, from the first meeting onwards, it was decided that no time would be wasted on discussing the course of history. Instead, the delegations would focus on those issues where consensus was possible, excluding other issues. There were no intentions to win battles at the expense of the other side.[339] This was a major factor in the success in the negotiation process itself. However, it also contributed to the failure of the peace process as a whole because it narrowed the number of issues that could be discussed in the DOP.

When the second, formal phase of the negotiations commenced, however, this integrative form of negotiating made way for a more distributive style, especially as security issues were discussed more in detail. An example of this is the way in which the parties dealt with an impasse in the negotiations in July

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[338] See Corbin (1994)
[339] *ibid*, pp. 61-62

1993. At that moment, there was disagreement on 16 issues.[340] To solve the impasse, the 16 issues were split into two groups. Each party was sent home with eight issues on which it could probably concede. Instead of searching for more mutual gains solutions, it was decided to head in the direction of a win-lose approach.

Third, the secrecy of the talks also contributed to the effectiveness of the negotiation process. No time was wasted on discussing the public statements about the negotiation process. Time only became an issue during the summer of 1993. The July crisis described above resulted in a loss of valuable time, due to a danger of information leaks to the press. Peres emphasized that time was running out when he visited the Scandinavian countries in August 1993. The negotiations were successfully concluded on August 17, 1993 as a result of his pressure to reach an agreement during his stay.

Endogenous – exogenous process

The negotiation process was mainly of an endogenous nature. The provisions of the DOP originated from the parties themselves and were not forcibly imposed from outside. The parties agreed themselves from the first meeting to negotiate within the 'spirit of Oslo' framework. Furthermore, the 'Gaza first' plan was an old creation of Peres', brought to the fore in 1980, but at the time rejected by the PLO, as it insisted on Israeli control over the whole of historic Palestine. Moreover, the idea to include Jericho in the DOP came from Arafat. Peres made an interesting remark to this respect. He realized that if the Israelis would offer only 'Gaza first', the Palestinians would think that the Israelis were not willing to talk about the West Bank. To empower the Palestinians, therefore, Israel had to agree to something more, as suggested by the Palestinians. When the Palestinians then asked for and received 'Jericho too' they considered it an important victory. The Palestinians were satisfied that they received more than just Gaza, while the Israelis were relieved that the rest of the West Bank remained out of the discussion.[341]

Despite all this, the whole process was a top-down process with only elite level representatives from just two parties of the conflict: the PLO and the Israeli Labor party. This exclusive nature of the process made Putnam and Carcasson conclude that groupthink played a role in the negotiation process. The belief in the necessity to accept the agreement as it lay on the table in Oslo, even if it was only a questionable consensus, points to this phenomenon. There were no

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[340] These issues included: the implementation of UN resolutions 242 and 338, issues to be dealt with in the permanent status negotiations, security of the settlers, control over the borders between Gaza and Egypt and between Jericho and Jordan, the responsibilities and extent of authority of the Palestinian Authority, and the question of a corridor between Gaza and Jericho.
[341] Peres (1993), p. 25

hawks present around the table to counterbalance the doves. As these authors claim:

> '[G]roupthink might be a necessary danger in a back channel process, especially one driven by the need for a breakthrough in a long-standing conflict. Simply put, taking a chance with this agreement seemed better than remaining with the status quo, which was a no-win situation for both sides. The process of groupthink might have caused difficulties in selling the agreement to both sides, but if getting an agreement was the goal, then groupthink may have facilitated rather than hindered the process.'[342]

And indeed, the nature of the talks resulted in an agreement that came as a surprise to the general public, both within and outside the Middle East. The Israeli and Palestinian people had to take it or leave it. The radicals on both sides decided to disagree and rejected it.

Constructive – inimical relations

The goal of the Norwegian intervention was to facilitate personal contacts between Israelis and Palestinians without the constant presence of and pressure from the media. To achieve this, the Norwegian team first of all paid attention to the locations of the negotiations. It tried to provide peaceful and serene settings, such as old manors in the countryside or in the woods, little hotels, etc. Both sides have indicated that these locations and the peaceful environment have contributed significantly to the success of the negotiations.

The second part of the Norwegian 'strategy' attended to the interpersonal level. During the negotiations, strong personal relationships developed between the various participants. This was not only the case between the two delegations, but also between them and Larsen. Between the various sessions, Larsen organized long walks for the delegation members in order to relax and to have informal contact. The participants also had dinner together, joked together, and had drinks at the end of the day. Larsen was convinced that if the members of the delegations could become a closer group by sharing their emotions and concerns, feelings of trust between former enemies and even some kind of intimacy would develop. This would eventually benefit the outcome of the negotiations. The Norwegian strategy also emphasized the strict equal treatment of the parties, from accommodation arrangements, to chauffeuring the delegations to and from the airport. Corbin described, for example, that if Larsen picked up one delegation from the airport at the beginning of a new round of negotiations, he would accompany the other delegation to the airport after the negotiation round was over.[343] This emphasis on the human dimension has proven to be extremely important. As Abbas described it:

> 'If the human element is taken out of negotiations, they become soulless, even if they do lead to agreements. Agreements reached like this will always need something else to support, consolidate and deepen them. Without a

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[342] Putman and Carcasson (1997), pp. 274-275
[343] Corbin (1994), p. 75

doubt, a thorough understanding of the psychology of negotiation contributed to the success of the mission undertaken by the Norwegian team.'[344]

Despite the strong personal relationships that had been developed, there were also, of course, crises during the negotiations. Sometimes the old and deep-rooted feelings of mistrust re-emerged and one wrongly chosen word was enough to bring an outburst of anger. Towards the end of the process, when the final details had to be settled, this was a recurrent phenomenon. Time was against them at these moments, as the possibility of leaks to the media became real. If the meetings had become public, all their efforts would have been in vain.

External – internal mediator / impartial – partial mediator

As it is clear from the description of the Oslo connection, both parties wanted an external facilitator to put the negotiations back on track. For the larger part of the negotiation rounds, the Norwegian team acted as a neutral facilitator, which had been agreed upon at the very beginning.[345] The original intention of the Norwegians was to use the secret meetings as a way to facilitate the bilateral negotiations in Washington. They believed that bringing the parties together in a less stressful environment could lead to solutions on some long-standing contentious issues. The aim then was to introduce these solutions into the official negotiations in Washington. Very soon, however, the Oslo talks became the most important channel for both parties, where issues were solved that could not be discussed in Washington as a result of a principal stance of one of the parties. Part of this success can be explained by the Norwegian team's emphasis on the pre-negotiations, the absence of which contributed to the failure of the Washington channel.[346]

Furthermore, Norway's political image in the international scene was also important for the success of its mission. The Norwegians did not act out of self-interest and as a minor international player they could not have any influence on the power distribution in the Middle East region. The research institute FAFO was used as a cover for the secret meetings. Stoltenberg, and later Holst, made sure that Foreign Affairs provided the money they needed. The Norwegians also regularly informed the USA about the meetings. The Israelis appreciated this inconspicuous but supportive approach, as they did not want extensive third-party involvement in the substance of the negotiations.

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[344] Abbas (1995), p. 105

[345] Authors use different labels for this kind of third party intervention. Aggestam referred to it as 'pure mediation' (Aggestam (2002), pp. 73-74); Pruitt emphasised the use of 'communication tactics' as opposed to formulation and manipulation tactics (Pruitt (2000), pp. 245-254); Bien described the Norwegians as 'active facilitators' (Bien (2000), p. 130); Gewurz called them 'non-pro-active impartial facilitators' (Gewurz (2000), p. 193).

[346] Sanders (1999), p. 57

The result was that both parties perceived the Norwegian team as neutral, which is very important in negotiations. Even if a facilitator/mediator tries to act as neutral or impartial as possible, if one is not perceived as such by the parties, relationships of trust cannot be built and the undertaking will probably lead to failure. The fact that both Israelis and Palestinians perceived the Norwegian team as impartial probably contributed to the fact that both parties allowed Holst's involvement towards the very end of the negotiations (see below).

Elicitive – prescriptive approach

The Norwegian team certainly did not use a prescriptive approach. Larsen mainly stayed outside the negotiation room. After negotiation sessions, he often did not even ask about the negotiations or whether any progress had been made. He only got involved in the content of the negotiations when the parties asked him to do so, which only happened outside the negotiation context (e.g. when they went for a walk in the woods). He merely tried to create an atmosphere as conducive as possible for reaching an agreement. His main tool was his conviction and belief in the possibility and the need for a successful negotiation process. His enthusiasm positively influenced the other participants. As such, the Norwegian team did not use a truly elicitive approach either. Its members never elicited solutions from the two delegations, but only provided the framework for the negotiations and at best encouraged the parties to reach an agreement, without becoming party to the negotiations.

This last aspect was certainly something that distinguished the Norwegian team from the American team. Initially, the American government had avoided active participation in the bilateral negotiations. By March 1993, however, little progress had been made and the Clinton administration decided to shift from the role of an 'honest broker' to that of a full third party around the table, actively intervening in the negotiations.[347] The Norwegians, on the other hand, were always careful not to become part of the negotiations.

This Norwegian non-involvement has to be put in perspective, however. When Holst succeeded Stoltenberg as minister of Foreign Affairs mid-April 1993, he stated that he would take more political responsibility for the Oslo channel and that he would try to be more actively involved.[348] An example of this 'new' approach was the fact that the two delegations most often paid a visit to Holst before returning home. Holst made time to listen to both delegations, without trying to influence them.[349] Furthermore, between the negotiating sessions Larsen and Holst often played the role of go-between, travelling to Tunis or Israel and transmitting messages from one delegation to another.

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[347] *ibid*, pp. 48-50
[348] Corbin (1994), p. 85
[349] Sanders (1999), p. 57

In the final stages, however, the Norwegians got much more involved in the real negotiations, although observers do not agree on the extent to which this happened. Different interpretations of the final stages of the negotiations can be found. A good example is again the July-crisis. Some observers claim that when the Norwegian team visited Arafat in Tunis to discuss the impasse, Holst actively suggested different ways of expressing difficult issues. They agree that he expressed his own opinion with respect to the formulations he believed were more appropriate. Others, however, believe he only suggested them, without expressing his own preference.[350] Abbas, for example, stated that the Norwegian team went 'beyond the role of host providing conditions of comfort and total secrecy for the negotiations, right up to direct interventions between the negotiators: to reconcile viewpoints and provide suggestions, alternatives and sometimes different scenarios. They adopted the role of full partner in the negotiations.'[351] Aggestam confirmed that Holst 'upgraded his role to that of a formulator.'[352] Corbin, on the other hand, claimed that Holst tried to remain neutral and that he might have suggested different formulations, but never expressed his own opinion or preference.[353] Nearly all observers agree, however, that the Norwegians, and more concretely Foreign Minister Holst, did play an active role in the formulation of the letters of mutual recognition, which were discussed after the negotiations on the DOP were finished. As such, the Norwegian team left its previous role of pure facilitator and became an active party in the negotiations (under the influence of Holst and not always with the full consent of Larsen). 'In that capacity', Aggestam stated, 'Holst assisted the parties in reformulating sentences and presented his own assessments of the obstacles and his view on what might be feasible.'[354]

5.1.7 Visual representation of the Oslo peace process

Inclusive negotiation process					🟥	Exclusive negotiation process
High level of authority of the negotiator			🟨			Low level of authority of the negotiator
Symmetric power relations					🟥	Asymmetric power relations
Constructive relations between parties		🟩				Inimical relations between parties
Elicitive mediation		🟩				Prescriptive mediation
Endogenous		🟩				Exogenous negotiation

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[350] *ibid*, p. 62
[351] Abbas (1995), p. 104
[352] Aggestam (2002), p. 77
[353] Corbin (1994), pp. 143, 177
[354] Aggestam (2002), p. 77

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negotiation process						process
Mediation is requested by all parties						Mediation is not requested by the parties
Impartial mediation						Partial mediation
External mediator						Internal mediator
The parties share a clear and compelling vision of the end-state						The parties share no clear and compelling vision of the end-state

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Table 11: Mapping the Oslo peace process

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2. The Agreements

Free acceptance – pressure and coercion

Both parties freely accepted the DOP, which was the logical result of the way the parties and the facilitator had approached the negotiations. Both sides were convinced of the need for direct talks and an agreement. Furthermore, the Oslo channel created its own dynamics and effectively became the substitute of the Washington talks, as the negotiations were conducted in an atmosphere which was much more conducive to reaching an agreement.

Internal support: high – low

In general, internal public support for the peace agreements was moderate to relatively high on both sides, especially immediately after their signing. Opinion polls conducted by the Jerusalem Media and Communication Centre (a Palestinian organization), show that the majority of the Palestinians supported the various agreements immediately after their signing: 68.6% of the Palestinians supported the DOP, 56.5% supported the Gaza-Jericho Agreement, and 65.6% were in favour of the Interim Agreement.[355] These figures are more or less in congruence with the findings of the Palestinian Center for Policy and Survey Research, which found that 65% of the interviewees supported the DOP, while up to 72% were in favour of the Interim Agreement.[356]

On the Israeli side, the Tami Steinmetz Center for Peace Research of Tel Aviv University created a Peace Index and an Oslo Index (starting in June 1994). These indices are aggregates of the results of various questions concerning the attitude of interviewees towards the peace process between Israelis and Arabs

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[355] Jerusalem Media and Communication Centre (1993); Jerusalem Media and Communication Centre (1994b); Jerusalem Media and Communication Centre (1995b).
[356] Palestinian Center for Policy and Survey Research (1995)

(Peace Index), or attitudes towards the Oslo Agreements in particular and the contribution of the Oslo Agreements to peace (Oslo Index). In 1994, immediately after the signing of the Gaza-Jericho Agreement, the Oslo Index was at 51 points. Towards the end of the year, however, it had dropped to 47.4 points. In the course of 1995, the Oslo Index was about 45-46 points, with a sharp increase (to 57 points) in November 1995 after the assassination of Rabin. In both years, the Peace Index was always much higher than the Oslo Index, a trend which is also visible on the Palestinian side. This can be explained by the fact that the Peace Index refers to a more abstract topic, while the Oslo Index refers to concrete agreements which have specific consequences in political and territorial terms.[357]

Opposition to the Agreements by specific factions, however, has been a heavy burden on the implementation process. The Islamic fundamentalist groups and organizations of the Israeli right have been spoilers in the peace process. Hamas and Islamic Jihad have used bomb attacks and suicide bombings to express their opposition to the Agreements and to undermine the peace process.[358] Public support for these groups was believed to have increased immediately after the signing of the Interim Agreement. Both groups also boycotted the first Palestinian elections in January 1996, which according to Inbar improved Arafat's position at that time.[359]

Concerning other spoilers in the peace process, Lustick wrote a remarkable article about how organizations that are seemingly proponents of peace may in fact oppose the process in a subtle way. He focused on right-wing opponents of Oslo in the American Jewish community (e.g. the Zionist Organization of America) and on independent organizations within Israel itself (e.g. Peace Watch, Independent Media Review and Analysis, and the Center for Peace Education). Lustick's central thesis is the following: '[O]pponents of the peace process itself, that is, opponents of the principles of compromise upon which it is based, can interrupt, stall, complicate, and even thwart it by prematurely (…) treating the agreement as a legal codex rather than a political framework.'[360]

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[357] In 1994, the Peace Index was around 64 points on average; in 1995 the Index fluctuated between 52 and 59 points, with an increase to 65-73 points in November. (The Tami Steinmetz Center for Peace Research, *Peace Index*, s.d.). It is important to note that support for the peace negotiations also increased prior to the signing of the DOP. Public support for peace negotiations with the PLO grew from 33% in 1987, to 40% in 1990, then dropped to 29% in 1991 and grew again to 52% in January 1993. (Mor (1997), p. 207)

[358] Immediately after the signing of the DOP, Hamas was rather moderate in its rejection of the agreement. Hamas' spiritual leader, Ahmed Yassin, even wrote an open letter from prison in which he raised the possibility of a cease-fire when Israel would withdraw from the Occupied Territories. After the killing of up to 30 Palestinians by an Israeli settler in Hebron (the Hebron massacre), Hamas responded with several attacks and took a more radical stance toward the peace process. (Kristianasen (1999), p. 23)

[359] Inbar (1996), p. 208

[360] Lustick (1997), pp. 61-62

Opponents of the peace process thereby insisted that 'the terms of the agreement' should be honoured. Violations by Palestinians were then used to argue that they were not complying with the legal obligations of the Agreement. In this way, they tried to push Israeli officials towards punishing these 'violations'. As Lustick claims:

> '[T]he tactic employed is to break the peace by treating the process not as a politically strategic, inevitably adapting, and intrinsically ambiguous framework for incubating trust and reconciliation, but as an array of legalistic and definitive limits for the opposing side versus an array of loopholes and opportunities for the aggressive, adversarial exploitation of opportunities for one's own side.'[361]

And further: 'It involves treating the agreements not as a basis for an evolving partnership, but as an array of legalistic and public relations weapons that can free Israel of its commitments, prevent further transfers of territory to Palestinian control, and delegitimize Arafat and the idea of a Palestinian state in the mind of Israel public opinion.'[362]

External support: high – low

In the case of the Israeli-Palestinian conflict, the 'relevant' international community here refers to the neighbouring countries, the relevant countries in the wider Middle East, and some important members of the international community, such as the USA, the EU and Russia.

In general, we can say that the international community reacted positively to the unexpected Oslo Agreement of September 1993. The USA, the EU and the Russian Federation all welcomed the new peace initiative. Although the USA was kept informed on the Oslo negotiations, it had not always supported the back channel talks, in the sense that it did not believe that these negotiations could possibly lead to an agreement. The Russian Federation also welcomed the Agreement. As co-sponsor of the Madrid peace process, it had always supported negotiations between the various Middle Eastern countries. Russia was granted the status of witness at the signing of all the Oslo Agreements. The EU, on the other hand, was only granted this status with the signing of the Interim Agreement. The EU was never directly involved in the bilateral negotiations between Israelis and Palestinians. Although almost all EU member states participated in the multilateral talks, the EU as such was only an observer, although it did chair the multilateral negotiations on regional economic development.

As the only country in the region with a peace agreement with Israel, the Egyptian government too welcomed the new steps taken on the road to peace.

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[361] *ibid*, p. 62
[362] *ibid*, p. 66

Egypt played an important role in the negotiations for the agreements following the Oslo Agreement. The Gaza-Jericho Agreement was signed in Cairo and Egypt was a witness for both the Gaza-Jericho and the Interim Agreement.

Jordan welcomed the DOP, but King Hussein was angry that he had not been informed during the back channel talks. The Jordanians had done all they could to facilitate the direct negotiations between the Israelis and the Palestinians. They had agreed upon a joint delegation for the bilateral talks, they had supported the Palestinian position, and they had even decided to refrain from concluding a peace agreement with the Israelis in the bilateral talks until progress was made on the Israeli-Palestinian track. According to Abbas, however, the Palestinians had made various efforts to inform King Hussein about the back channel talks, but were not able to do so because of specific circumstances.[363] Nevertheless, the Jordan government supported the DOP and signed its own peace agreement with the Israelis a year later, on October 26, 1994.

Syria, a long-time enemy of the Israelis, opposed the Oslo Agreement from the beginning because it believed that Oslo's partial solution lessened the chances of a favourable final peace agreement.[364] Syrian President Assad had not been very keen on engaging in negotiations with Israel in the context of the Madrid talks. Some progress was made in the bilateral negotiations, but an agreement was not reached. Israel adjourned the negotiations in 1996 and only resumed them in 1999. Furthermore, Syria did not participate in all the multilateral committees.

The position of Saudi Arabia was ambiguous. Officially, the Saudis have always supported a peaceful solution to the Arab-Israeli conflict. Although they had supported the Arab position on the Palestinian question and Muslim claims in Jerusalem, the Oslo Agreement received their support as a document for peace. However, the Saudi formal position is not always in congruence with its unofficial stance (although probably the same can be said of other of Israel's neighbouring states). Certainly since the beginning of the 1990s and the PLO's support for Saddam Hussein in the Gulf war, it is claimed that Saudi Arabia has been supporting Hamas and other radical movements in their violent struggle against the Israelis.[365]

Neither Iran and Iraq were part of the Madrid peace process and both countries opposed the Oslo Agreements. Iran believed the Agreements were a sell-out to Israel, which denied the right of millions of displaced Palestinians to return home. Furthermore, Iran had been supportive of radical Islamic groups, such as

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[363] Abbas (1995), p. 187
[364] Kessler (2000), pp. 74-75
[365] Congressional Research Service (2001)

Hezbollah, Hamas and Islamic Jihad.[366] Iraq is believed to have given support and safe haven to certain Palestinian groups that rejected the Oslo Agreements, such as the Arab Liberation Front.[367]

Within the American Jewish community, opinions were divided. According to the Israel Policy Forum, an organization that regularly conducts opinion polls within this Jewish community, some 70% of American Jews supported the peace process and the Oslo Agreements during the Clinton era. Some of the most powerful lobby groups, such as the AIPAC (American Israel Public Affairs Committee), however, opposed the Agreements.[368]

Comprehensive – partial agreement

One of the most important aspects of the DOP is that it was a non-comprehensive agreement, which did not deal with the most important issues of the conflict. Although it was a major achievement in itself that a constructive dialogue was created between two long-time enemies, a historic chance has been missed at the same time. The core issues of the conflict, such as the status of Jerusalem, the destiny of the Palestinian refugees, the Israeli settlements, and the borders of Israel, were not resolved and only touched upon in the most minimal way. To use Morag's wording: 'the opaque nature of the Oslo process, which effectively left all options open for the final settlement, served the need of the negotiators and their political bosses by enabling the parties to achieve a breakthrough without, at the same time, relinquishing strongly held positions as to the nature of the final settlement.'[369]

Several elements can explain why no agreement on these permanent status issues could be reached during the Oslo negotiations. First of all, both parties agreed upon the fact that there would be no discussions on those issues which lacked potential for consensus. This was already agreed in the first meeting in Oslo in January 1993. Both sides' positions on these issues were so divergent that reaching an agreement on these topics seemed almost impossible. The problem, however, was that the negotiations were not used to create a common conception of the nature of the final settlement. As Maksoud stated: 'the PLO-Israel talks cannot be described as negotiations. Negotiation presumes agreement on an outcome – *or at least the broad parameters of an outcome*. In the Declaration there is no mention of a feasible and mutually acceptable result from the peace process'[370] (Italics added). Negotiations do not always need to have a defined outcome as their objective. But, as Maksoud rightly argued, at

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[366] Blanford (2002); Margolis (1997)

[367] Jerusalem Media and Communication Centre, *Palestinian political and religious factions*

[368] Mearsheimer and Walt (2006); Gordon 1998

[369] Morag (2000), p. 201

[370] Maksoud (1995), p. 121

least the broad parameters of an outcome should be made available by the negotiators. And this was definitely lacking in the Oslo Agreements.

The advantage of this approach was that both parties were better able to 'sell' the non-comprehensive agreement to their respective constituencies. This is a second important element, as was the fact that the final status issues where not discussed during the negotiation rounds in Oslo, as a result of disagreement within the Israeli government. The group around Beilin and Peres wanted to take advantage of the constructive atmosphere to reach a final agreement on all the difficult issues. Rabin, however, opposed this method of working.[371] He was particularly afraid that the burden for the Israeli people would be too heavy. Both peoples were, after all, 'asked to make extremely significant psychological and perceptual changes and concessions. The two populations were being asked to begin viewing each other as partners rather than continue the 100-year-old view of each other as adversaries', said Morag.[372] According to Rabin, reaching agreement on these sensitive issues during secret negotiations and presenting it to the people as a 'fait accompli' would have provoked a lot of confusion and too much opposition.

Those opposed to the DOP, however, used its opacity as a weapon to convince the public that their future was uncertain. How was a revision of old stereotypes possible or, in the longer term, true reconciliation, if uncertainty remained about the future status of the Territories or the lives of refugees? How can one start to leave the past behind if there is no clear and compelling vision of the future? It was this element that endangered the whole process from the beginning.

Reasonable satisfaction of interests – dissatisfaction of interests

We will now briefly look at some of the most important interests that were at stake in the negotiations and assess whether they were dealt with satisfactorily in the Agreements.

The basis of the DOP and the subsequent implementation agreements was the principle of 'land for peace' and this expressed also the parties' respective basic interests. The Palestinian territorial demand was control over all the Palestinian land that was taken in occupation in 1967. Both parties agreed in Oslo upon a gradual withdrawal of the Israeli military forces from the Gaza Strip and the West Bank. The question whether this demand has been met in the Oslo Agreements relates to the mention of Security Council Resolutions 242 and 338 in the Agreements. The difficulty about these Resolutions is whether they refer to the whole of the Gaza Strip and the West Bank or to parts of them. This is the now-famous discussion on '*the* territories' (all of the land claimed by the Palestinians) or just 'territories' (and thus undefined and to be

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[371] Morag (2000), p. 206; Beilin (2003)
[372] Morag (2000), p. 201

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agreed upon; this is how it is referred to in the UN Resolutions). The Oslo Agreements stated that the negotiations on the permanent status issues would lead to the implementation of Resolutions 242 and 338. As a result, this meant that not necessarily the whole of the West Bank and the Gaza Strip would be transferred to the Palestinians. This interpretation is supported by the fact that in the DOP, and also in the Gaza-Jericho Agreement, no clear definitions of the Territories were provided. And although maps of the whole of the West Bank were included in the Interim Agreement, it still depended on the final status negotiations whether the Palestinians would regain control over the whole of the Territories, given the reality of the settlements and the 'military installation areas'. Furthermore, no article in the Agreements refers explicitly to the establishment of a Palestinian state in the future, preferably at the end of the interim period. To use Morag's explanation again: 'The Palestinian side evidenced a willingness publicly to withdraw claims to areas beyond the Green line (…). However, the Israeli side (…) found it considerably more difficult to speak of a permanent break with the ideal of Eretz Israel and hence preferred to present the DOP as an interim solution and emphasise the fact that Israel, in signing the DOP, was not countersigning a Palestinian Declaration of Independence.'[373]

The Israeli security demand is related to the gradual approach to which both parties agreed. The Israelis wanted a clear distinction between the interim and the final phase of implementation. This relates partly to the above-mentioned disagreement within the Israeli government concerning the inclusion of the final status issues in the Oslo negotiations. More importantly, this emphasis on a clear distinction between the two phases relates to Israel's security concerns. The gradual transfer of civil powers to the PA would coincide with a gradual transfer of security responsibilities. Israel would thereby remain in control of overall security for Israelis and the settlements, and of security against external threats (borders with Egypt and Jordan). To assure internal security and public order, the Palestinians had to establish a police force. At the same time, several cooperation and coordination mechanisms were established.

Other basic points of interest for both parties, and in fact root causes of the conflict, were of course the final status issues. Concerning the issues of the borders, we can refer to the discussion above on the Palestinian demand for territory. With respect to Jerusalem, the Palestinians tried for a long time to include the holy city in the negotiations and the Agreement. Israel, however, insisted that Jerusalem not be mentioned. It was only in the sixth round of negotiations that the Palestinians agreed to leave Jerusalem out. They did, however, succeed in including it with respect to the elections, as they demanded that all Palestinians, thus also those living in East-Jerusalem, would be able to participate in the elections. This was an important victory for the

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[373] *idem*

Palestinians and in fact the expression of the fact that Jerusalem was not the eternal and undividable capital of Israel.

Concerning the settlements, it is said that in Oslo Rabin made an oral commitment to stop the construction of any new settlements.[374] In the Oslo Agreements this is not said in so many words, but the principle is in fact expressed by the articles that state 'nothing in the Agreement should pre-empt or prejudice the outcome of the negotiations on the permanent status'.[375] This meant that both parties agreed upon the preservation of the status quo with respect to the final status issues. However, during the Rabin era, as well as afterwards during the Netanyahu period, settlements were still being built and the status quo thereby broken. As Saeb Erekat, Palestinian negotiator in the post-Oslo era, stated: 'Settlement to Palestinians is equivalent to bus explosions in Tel Aviv to Israelis. It's the ultimate threat. It's land, it's future.'[376]

The economic viability of the Palestinian entity was another major concern. By demand of the Palestinians, the Agreements provided the establishment of all sorts of Palestinian Authorities, such as a Water, a Land and an Energy Authority and also a Development Bank. At the same time, by demand of the Israelis, many cooperation mechanisms were established for all kinds of economic (but also security and foreign relations) issues, including some of the policy domains in which power was transferred to the Palestinians. In this way the Palestinians lacked true autonomy and the Israelis were involved in some important policy fields.

In sum, we can argue that both parties 'won' on some issues and 'lost' on others. However, with respect to the two most important issues, land and security, we believe it is correct to say that the Oslo Agreements were more receptive to the Israeli demands than to those of the Palestinians. The Israelis remained in control of security in most areas, even after the Interim Agreement, while the Palestinians only regained control of a limited range of civil affairs and only part of the territory. More importantly, they did not even receive the prospect of an independent Palestinian state.

Adequate/inadequate treatment of all conditions for sustainable peace

A peace agreement is void when lacking one or more of the main issues of the conflict. We have discussed above that one of the main deficiencies of the Oslo Agreements was that the negotiations on permanent status issues were postponed until a later phase. Now we will take a broader look and assess whether or not all the building blocks for sustainable peace were touched upon

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[374] Setton and Mayor

[375] DOP Art.V.4; Gaza-Jericho Agreement Art. XXIII.5; Interim Agreement Art. XXXI.6.

[376] Setton and Mayor

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adequately by the Agreements. These blocks include the presence of peace-enhancing structures (political, economic, and security structures), the construction of an integrative climate, and multilateral cooperation. The building block of 'peace building leadership' will be discussed in a later section on the internal capacity for implementing the agreements.

The analysis of the Agreements shows that the peace-enhancing structures are covered extensively. First, concerning the political structure, all the Agreements focus on the establishment of a democratic political system in the Palestinian Territories. Direct, free and general elections of a Palestinian Council and 'Ra'ees' are foreseen. The election agreement elaborated on the qualifications and rights of voters and candidates, the international observers of the elections, and the technicalities of the election campaign. The Interim Agreement further provided arrangements on the structure, size and composition of the Council. And both the Gaza-Jericho and the Interim Agreement also elaborated on the policy areas which were to be transferred to the Palestinians. Finally, an 'independent judicial system composed of independent Palestinian courts and tribunals'[377] was to be established, although no reference was made to the structure of the Palestinian court system.

Second, from the outset of the negotiations in Oslo, the economic dimension was seen as a basic element of the peace process. In the preamble of the Protocol on Economic Relations[378] it is expressed as follows:

> 'The two parties view the economic domain as one of the cornerstone in their mutual relations with a view to enhance their interest in the achievement of a just, lasting and comprehensive peace. Both parties shall cooperate in this field in order to establish a sound economic base for these relations, which will be governed (…) by the principles of mutual respect of each other's economic interests, reciprocity, equity and fairness.'

The philosophy behind this statement is that, following the European example, economic progress and cooperation would foster peace and democracy. The economic dimension was first dealt with in the DOP, which established several economic institutions and programmes for the Palestinians and provided the framework for economic cooperation in various domains. The development of the West Bank and the Gaza Strip, and the region as a whole were central principles. The Protocol on Economic Relations further elaborated on the framework for cooperation and provided detailed arrangements on taxation, import policy and the policy framework for, among other things, labour and insurance issues.

Security is the third main peace-enhancing structure. It is an integral and crucial part of the Oslo Agreements and the philosophy of 'land-for-peace'. The security arrangements focus on three issues: the withdrawal/redeployment of Israeli military forces, the establishment of a strong and effective Palestinian police force, and cooperation on and coordination of security issues between

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[377] Interim Agreement, Art. IX.6.
[378] Annex IV of the Gaza-Jericho Agreement, signed on April 29, 1994.

Israelis and Palestinians. The annexes on the security issues were very detailed and gave a strict overview of which party would have the security responsibility in which area (broad areas in general, but also more specific roads, crossing points, passages, etc.). These arrangements were not only intended to enhance the objective security, but also the subjective security or the feeling of being secure. This is even explicitly stated in the context of the Palestinian police force: one of its duties is to 'provide a feeling of security, safety and stability'[379].

The effective functioning of these peace enhancing structures is of course dependent on the financial capacity, infrastructural provisions and political will to implement the arrangements of the Agreements. We will briefly touch upon these issues when we discuss the implementation phase.

A precondition which is oftentimes overlooked, but is nevertheless crucial to sustainable peace building, is the creation of an integrative climate, also called the 'software of peace building'.[380] The integrative climate is composed of several elements: future perspectives, human security, multiple loyalties, social capital (trust), the willingness to cooperate, reconciliation, and the absence or deconstruction of senti-mental walls.

Several times in the Agreements, reference is made that alludes to some of these elements. Mainly, this is done in the context of the future cooperation between the two parties. In his letter to Rabin, for example, Arafat referred to the signing of the DOP as a 'historic event, inaugurating a new epoch of peaceful coexistence, free from violence and all other acts which endanger peace and stability.' The preamble of the DOP stated that both sides agreed that 'it is time to put an end to decades of confrontation and conflict, recognize their mutual legitimate and political rights, and strive to live in peaceful coexistence and mutual dignity and security and achieve a just, lasting and comprehensive peace settlement and historic reconciliation through the agreed political process.' Similar statements are made throughout the Agreements.

However, much of these statements are nothing more than rhetoric. Only sporadically are concrete projects suggested to realize these statements. In the context of Human Resources Development and Cooperation, for example, Annex III of the DOP provided the possibility for joint Israeli-Palestinian workshops and seminars, joint vocational training centers, research institutes and data banks. Another example is the Interim Agreement's cooperation in various spheres (economy, science, social and cultural fields) was put forward as a way of facilitating reconciliation. Confidence-building measures provided in the Gaza-Jericho and the Interim Agreement were also important: 'With a view to creating a positive and supportive public atmosphere (…) and to establish a solid basis of mutual trust and good faith'[381], Israel agreed to release or turn over Palestinian detainees and prisoners. In the letters of exchange

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[379] Interim Agreement Annex I Art. IV.1.b.
[380] Reychler and Langer (2002), p. 31
[381] Gaza-Jericho Agreement Art. XX; repeated in the Interim Agreement Art. XVI.

attached to the Gaza-Jericho Agreement, the PLO also agreed to take 'efforts to locate and return to Israel soldiers who are missing in action and the bodies of killed soldiers which have not been recovered' (This statement is repeated in the Interim Agreement). Both sides, however, made too little effort to adhere to these statements. And although the Agreements referred to it as one of the objectives of the peace process, no concrete reconciliation measures were provided. Nowhere is there, for example, any mention of compensation for damage, evictions, or sequestration of property, either in monetary terms for individuals, or in symbolic terms for the community.

Multilateral cooperation is a third building block for sustainable peace building. The Oslo Agreements referred several times to this element as an integral part of the peace process. The governments of Jordan and Egypt, for example, were openly invited to participate in establishing liaison and cooperation arrangements with the Palestinians and Israelis. The other multilateral cooperation programmes were placed in the context of the multilateral negotiations of the Madrid peace process. The Agreements thereby truly transmitted the message, without being concrete in how to establish the programmes, that multilateral cooperation was crucial for the future of the Middle East and the peaceful coexistence of the various countries.

Precise/principled agreement, concrete measures/interpretative freedom

Besides its non-comprehensive nature, the DOP also was, as its name suggests, nothing more than a *declaration* of *principles*. The intention of the singing parties was to use the DOP as a framework for future negotiations. Such an attitude was desirable, as otherwise no agreement would have been possible. The two implementation agreements on Gaza-Jericho and Gaza-West Bank therefore are much more concrete than the DOP. However, these agreements were bound by the non-comprehensive nature of the DOP. Because they were treated as implementation agreements, they could not include new principles. Both agreements specifically refer to the DOP as a frame of reference.

As a result of the principled nature of the DOP, the interpretative freedom of the Agreement was large. Both parties were able to interpret the Agreement according to their own wishes. The Oslo Agreements were fundamentally based on the principle of territorial partition. Both parties agreed to this principle, but because the Agreements only created temporary lines of partition, both parties used this as an argument to their respective constituencies.[382] The

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[382] The idea of territorial partition was of course not new. It was first proposed by the Peel Commission in 1937, when the UK, as the mandate holder of Palestine, wanted to restore order after Arab riots had destabilised the region. The idea arose again in 1947, prior to the establishment of the state of Israel. On both occasions, it was rejected by the Palestinians, who insisted on control over the whole of historic Palestine. The PLO only accepted the two-state solution in 1988, but by that time the

Palestinians were able to portray it as an irreversible process, from which there was no turning back, and which would ultimately lead to the creation of a Palestinian state. The Israelis, on the other hand, could portray the Oslo Agreement in a totally different way. In a first phase, according to their interpretation, the Agreement would free them from their responsibility for the Gaza Strip, without giving up the overall security control for the Territories. Eventually, the Agreement would lead to the physical separation of Israelis and Palestinians, while only granting the Palestinians limited autonomy and ultimately ensuring the security of Israel.[383] Although there is no article in the Agreements that literally states that a Palestinian state will be established in the future, the Palestinian leadership used the vagueness and opacity of the Agreements to convince its followers of the opposite. Yet while it is implicitly clear that the outcome of the Agreements and the negotiations on the permanent status issues would be the establishment of a Palestinian state, the Israeli leadership used the ambiguity of the DOP to assure its own constituency of the fact that only limited autonomy would be granted to the Palestinians, and not a true Palestinian state. Ellis described this essential contradiction of Oslo as follows: 'Whereas Palestinians thought that Oslo was the first step toward an expanded agreement that would see Israel withdraw to its 1967 borders, Israelis have seen Oslo as a final step to solidify their state beyond those borders.'[384]

The same kind of divergent interpretations existed concerning Jerusalem, and whether it would be part of a Palestinian state or remain under Israeli sovereignty, and concerning the redeployments, and how far-reaching these would be.

Third party guarantees for demobilization period – no third party guarantees

The DOP, the Gaza-Jericho Agreement and the Interim Agreement[385] all refer to the establishment of a temporary international presence. However, such a mission was never established for the whole of the Gaza Strip, the Jericho Area or the whole of the West Bank, but only in Hebron. After the Hebron massacre of 25 February 1994, in which up to 30 Palestinians were killed by an Israeli resident of the Kiryat Arba settlement, Israelis and Palestinians engaged in negotiations on an international presence in Hebron. On 31 March 1994, an agreement was signed after which the Temporary International Presence in

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Israeli Likud government rejected the idea. (Shlaim (1994), p. 26; Makovsky (2001), 2, pp. 44-45)
[383] Morag (2000), pp. 201-202; Makovsky (2001), pp. 37-38
[384] Ellis (1997), p. 56
[385] DOP Annex II 3.d, Gaza-Jericho Agreement Art. XXI, Interim Agreement Annex I Art. VII.10.

Hebron (TIPH) was established.[386] Its mission was to promote stability and to restore normal life in the city. Due to disagreement on the extension of the mandate, however, the TIPH had to withdraw in the beginning of August 1994. The Interim Agreement provided a special timetable for the withdrawal of Israeli military forces from the city of Hebron. Annex I further provided the establishment of a new TIPH. On 9 May 1996, the Agreement on Temporary International Presence in Hebron was signed and the new TIPH was set up on 12 May. This new TIPH only had a provisional character. It had its mandate renewed on a monthly basis in anticipation of the partial Israeli redeployment from Hebron. On 17 January 1997, the two parties signed the Protocol Concerning the Redeployment in Hebron and four days later a new Agreement on Temporary International Presence in Hebron was signed. This multinational TIPH mission entered into force on 1 February 1997.[387] Since then, its mandate has been renewed every three months.[388]

Power sharing guarantees – no power sharing guarantees

As a result of the nature of the conflict, no power sharing government was installed. As it was discussed above, the Agreements implicitly provided a two-state solution. The basic principle was the strict separation of people and of powers and responsibilities. In practice, various cooperation and coordination mechanisms were established concerning a whole range of policy matters.

Visual representation of the Oslo peace agreements

Voluntary acceptance of the agreement	green					Parties were pressured/coerced to accept
Internal support for the agreement is high			yellow			Internal support for the agreement is low
External support is high			yellow			External support is low
The agreement is comprehensive				red		The agreement is not comprehensive
Reasonable satisfaction of interests				orange		No reasonable satisfaction of interests
Power-sharing guarantees				red		No power-sharing guarantees
The conditions for			yellow			The conditions for

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[386] The TIPH was staffed by Norway, Italy and Denmark.

[387] Norway, Sweden, Denmark, Switzerland, Italy and Turkey provided personnel.

[388] Jewish Virtual Library (2003); European Institute for Research on Mediterranean and Euro-Arab Cooperation (2003); Hostens (2004), pp. 40-41

sustainable peace are dealt with in a satisfactory manner			🟨			sustainable peace are not dealt with in a satisfactory manner
The agreement consists of concrete measures				🟧		The agreement mainly consists of principles
Precise agreements with little space for interpretation					🟥	Interpretative agreements with little precision in its provisions
Adequate third party guarantees for demobilization				🟧		Inadequate third party guarantees for demobilization

Table 12: Mapping the Oslo peace agreements

3. Implementation

Politically and/or legally binding agreements – not binding

The question whether the Oslo Agreements are merely political or also legal documents is important with respect to their implementation. If the documents are just political documents, they can be violated without major formal consequences. Such agreements are only binding insofar the parties decide to adhere to the agreements. This is the basic principle of a political agreement. If they are legally binding, on the other hand, then they have implications for the internal legislation of both parties. Furthermore, legally binding documents are seen as much more authoritative than purely political documents, as compliance with such agreements is expected to be much higher. Neither the Israelis nor the Palestinians, however, have ever expressed their opinion on the juridical nature of the Oslo Agreements.

Assessing whether the Oslo Agreements are legally binding in fact means examining whether the documents are real 'treaties'.[389] The leading definition of a treaty is contained in the 1969 Vienna Convention of the Law of Treaties. A treaty is defined as 'an international agreement concluded between States in written form and governed by international law'.[390] This definition narrows the question on the legality of the Oslo Agreements to a very specific thing: were the two parties states at the moment of signing? Watson concludes that none of the Agreements can be considered treaties in the narrow sense of the definition given by the Vienna Convention, as a Palestinian state was not a signatory. To support his conclusion, Watson uses a traditional definition of statehood as it is defined in the Montevideo Convention on the Rights and Duties of States

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[389] The following argumentation on whether the Oslo Agreements are legally binding or not stems from Watson (2000).

[390] Watson (2000), p. 57

(1933). Article 1 of this Convention holds that a 'state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states'.[391] When the PLO signed the DOP in 1993, a Palestinian state in this sense certainly did not exist. Although the first criterion, that of a 'permanent population', was fulfilled by the Israeli government's recognition of the PLO as the 'representative of the Palestinian people',[392] the other criteria were certainly not fulfilled. The Palestinians did not possess any real territory and the one they claimed was disputed by Israel. The PLO also certainly did not constitute the government of the Territories, as it was not in control of its claimed territory and daily rule was in the hands of the Israeli government. Finally, the PLO also did not have the political, financial or technical capabilities to enter into relations with other states. Although the PLO did have diplomatic relations with other states, these relations served a political goal more than any intention to carry out the real goals of diplomatic relations.[393] The conclusion that the DOP was signed between a state and a non-state actor is also confirmed by Abbas: 'We do not claim that we signed an agreement that created an independent Palestinian State; none of the provisions in the Declaration of Principles makes such a claim.'[394]

For the same reasons as for the DOP, the PLO that signed the Gaza-Jericho Agreement was not in control of a state, but was rather the 'representative of the Palestinian people'. And the same is true for the Interim Agreement. The Gaza-Jericho Agreement did establish a Palestinian Authority with a limited amount of real powers and with some of the characteristics of a state, but it was the PLO as an organization that signed the Agreement, and not a state. There was a 'defined territory' after this agreement, the Gaza Strip (although not in its entity) and the Jericho area, in which the PA constituted the 'government'. But the PA did not have full control over the territory. It only had limited powers and Israel was in control of all the powers not transferred to the PA.[395] Furthermore, the PA only had a limited capacity to engage in relations with other states. Both the Gaza-Jericho Agreement and the Interim Agreement state that neither the PA nor the Council will have powers in the sphere of foreign

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[391] *Montevideo Convention*, December 26, 1933, http://www.yale.edu/lawweb/avalon/intdip/interam/intam03.htm (last accessed 07/06/08).
[392] Letter from Prime Minister Rabin to Yasser Arafat, September 9, 1993.
[393] Watson (2000), pp. 61-63
[394] Abbas (1995), p. 218
[395] Gaza-Jericho Agreement Art. II.1: '(…) except for the authority that Israel shall continue to exercise as specified in this Agreement.' Interim Agreement Art. I.1: 'Israel shall continue to exercise powers and responsibilities not so transferred.'

relations. The Agreements do grant the PLO certain powers in this sphere,[396] but this does not change the conclusion that the Interim Agreement was signed by a non-state actor.

The fact that the Palestinian party to the Agreements did not constitute a state at the moment of signing does not mean that the Agreements are merely political documents and cannot be legally binding. It can be argued after all that the two parties expressed the intention of legality in the documents. Each of the Agreements, for example, concluded with the notion that the agreement will 'enter into force' on a particular date. According to Watson, this formulation is typical of treaties.[397] And although the DOP was only a framework document and often seemed to be rather vague and ambiguous on purpose, according to Watson the 'agreement to agree' does not make an agreement less legally binding.[398] Furthermore, during the negotiations the Israelis added Joel Singer to the negotiation team to make sure that the document that was being produced was legally correct. The Palestinians also consulted legal experts, although only towards the end of the negotiations. The Gaza-Jericho Agreement expressed the intention of legality even stronger: it was an 'agreement' (and not merely a declaration), which is more commonly used to denote a treaty or an international agreement; it was more detailed and more formal than the DOP.[399] The Interim Agreement was, again according to Watson, the most 'legal' agreement. It created specific obligations for the different parties, was very detailed, and was also an 'agreement'.[400]

The fact that the intention to make the documents legally binding was present, however, does not make these documents 'legal' documents or treaties. Some authors claim that it is especially the fact that the PLO was a non-state actor, which prevents the Agreements from being legal documents. They also point to the fact that the Agreements violate some peremptory norms of international law, as there are the Israeli right of 'self-preservation' or 'nullum crimen sine poena' ('no crime without a punishment'). According to the latter norm, it is argued that Israel has violated international law, because it has signed an agreement with a 'terrorist organization' and has failed to extradite or prosecute terrorists.[401] Watson, however, opposes this interpretation and has a strong argument for the case that an agreement between a state and a non-state actor can be legally binding. Article 3 of the Vienna Convention after all declares that the fact that agreements are not treaties does not affect the 'legal

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[396] Gaza-Jericho Agreement Art. VI.2; Interim Agreement Art. IX.5.

[397] Watson (2000)., p. 66

[398] *ibid*, p. 65

[399] *ibid*, pp. 67-68

[400] *ibid*, pp. 71-72

[401] For example, see Beres (1995), Watson, however, rejects these arguments: Watson (2000)

force' of agreements between states and 'other subjects of international law'.[402] Watson argues that he PLO is in fact such an 'other subject of international law' and proves by means of examples from the past (e.g. decolonization agreements between motherland and colony, or between states and sub-state entities aspiring for autonomy or independence) that such agreements can be legally binding. And as such, they are subject to interpretation in accordance with the rules of customary law of treaties. Furthermore, the demeanour of both Palestinians and Israelis with respect to the implementation of the Agreements also suggests that they themselves thought of the Agreements as binding documents. Both parties have voted on the Agreements, Israel has changed some military regulations and the Palestinians have adopted some internal rules to comply with the Agreements, and both parties have implemented and complied with specific parts of the Agreements.

Verification measures: effective/ineffective, adequate sanctions/no sanctions

These two dimensions will be dealt with at the same time, as they are closely related to each other in the case of the Oslo Agreements. The Agreements do not refer to any verification measures. There is no independent authority, internal or external, empowered to verify violations concerning the implementation of the Agreements. Moreover, there are no sanctions available in case of such a violation. The suspension of the implementation when one of the parties would not adhere to the Agreements was left to the judgment of the parties themselves. As a result, the Israelis have more than once halted the redeployment of its military forces in response to a Palestinian breach of the Agreements, mainly with respect to the failure to combat terrorism.

Adequate internal capacity for implementation – inadequate internal capacity

Assessing whether or not the capacity to implement a peace agreement adequately is available involves focusing on a wide range of issues. Here, we will focus on the financial/organizational capacity and on leadership or the will to implement the Agreements.

To implement the Oslo Agreements, the Palestinian Authority and a properly functioning administration had to be established. The Agreements provided arrangements for the transfer of indirect and direct tax money from Israel to the Palestinian Authority. Furthermore, the PA was free to decide on its own policy of income tax, property taxes and municipal taxes. The PA also had all the powers and responsibilities in the sphere of import and customs policy. The Agreements further provided the transfer of the necessary information

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[402] Watson (2000), p. 91

(registers, records) and material infrastructure (computers, buildings, relevant police equipment and infrastructure) in the regions where Palestinians regained control. Institutionally, the DOP provided the establishment of an Emergency Fund, to encourage foreign investment and financial and economic support. Cooperation in the field of finance was also focused on with the establishment of a Financial Development and Action Program for the encouragement of international investment and the establishment of a Palestinian Development Bank. The Gaza-Jericho Agreement further provided the establishment of a Monetary Authority.

When we turn to the (political) will on both sides to implement the Agreements, we are confronted with what we can call inadequate leadership. One of the key promises of the Oslo negotiations was that the Agreement would produce greater trust and security for both sides. Although formally stated in his letter of recognition to Rabin, Arafat was able to keep his promise of fighting terrorism. The newly established Palestinian police force was not able to clamp down on the radical groups' attacks on the peace process. Coordinated actions with the Israeli forces showed, however, that cooperation and effective action could have positive results. Furthermore, as Makovsky expressed it, Arafat refused to equate peace with reconciliation. The Oslo Agreement focused on the return of land and powers to the Palestinians, while at the same time ensuring the security concerns of the Israelis. Implicitly of course, this deal was intended to moderate Arab enmity. Arafat, however, never encouraged this goal, for example by giving a speech to his own people in Arabic in which he called for reconciliation.[403]

But on the Israeli side, the leadership was equally unwilling to strive unconditionally for peace. Both Rabin and his successor Netanyahu used very limited and strict interpretations of the Agreements. In this respect, reference can be made to the above-mentioned articles in the Agreements that call for the preservation of the status quo. Both Israeli leaders did not adhere to these provisions, for example with respect to the settlements. Furthermore, the Israeli leaders have used every small breach by the Palestinians to halt the implementation (mainly with respect to the redeployments), while not adhering to their own obligations (e.g. with respect to the release of Palestinian prisoners, which was considered as a confidence-building measure). Therefore, leaders on both sides have failed to exercise peace building leadership.[404] Their attitudes and behaviour have largely contributed to the failure of the peace process.

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[403] Makovsky (2001), pp. 31, 33-34
[404] For a study on peace building leadership, see: Reychler and Stellamans (2003)

External support: adequate – inadequate

External support for the implementation phase refers mainly to the political and economic support given by external actors. In the analysis of the Agreements above, we have already focused on the political support from the relevant international community. In this part, we will focus briefly on the external economic support. We will only touch on some important initiatives. The question whether these programmes were sufficient for the (re)construction of the Palestinian Authority and economy lies beyond the framework of this chapter.

Even before the signing of the DOP, the World Bank, in cooperation with other donors and the Palestinians, had produced a series of reports that provided the first comprehensive review of the economic situation in the West Bank and the Gaza Strip, and provided insight into the reconstruction requirements. As a result, the World Bank and the international community were able to mobilize funding and launch the reconstruction efforts quickly after the signing of the DOP.[405] On 1 October 1993, for example, representatives from 22 donor states, international financial institutions, and neighbouring states gathered in Washington for a donor conference on the West Bank and the Gaza Strip. A $2.3 billion aid programme was launched.[406] The number of donors grew in the following years. In 1997, 30 states were involved in all kinds of projects in the West Bank and the Gaza Strip. By 1999, 50 bilateral and multilateral donors were active. Over 60 foreign and 1,200 Palestinian NGOs were working in the field.[407] Table 1 gives an indication of the amount of aid given in the years following the signing of the DOP.

Algeria	10	Germany	355	Russia	4
Arab Fund	150	Greece	28	Saudi Arabia	208
Australia	13	International Finance Corp.	70	Spain	147
Austria	25	Ireland	7	Sweden	95
Belgium	39	Israel	75	Switzerland	90
Brunei	6	Italy	156	Turkey	54
Canada	43	Japan	312	United Arab Emirates	25
China	15	Jordan	20	United Kingdom	128
Denmark	50	Korea	15	UNDP	12
Egypt	17	Kuwait	25	United States	500
European Investment Bank	300	Luxembourg	11	World Bank Group	320
European	421	Netherlands	154	World Food	9

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[405] World Bank Operations Evaluation Department (1999), p. 3
[406] Frisch and Hofnung (1997), p. 1243
[407] *ibid*; World Bank Operations Evaluation Department (1999), p. 2

Union				Programme	
Finland	13	Norway	244	Other donors	2
France	80	Qatar	3	**Total pledges**	**4.2 billion**

Table 13: Donor pledges of assistance to the West Bank and Gaza, 1993–1998 (millions US$)

Source: World Bank (1999)[408]

Donors contributed to a wide range of activities: support for the affected physical infrastructure sectors, institution-building, technical assistance, support for democracy and elections, funding for NGOs, funding and in-kind assistance to the Palestinian police force, budgetary start-up and recurrent costs for the new Palestinian administration.[409]

The question whether the aid provided was sufficient lies beyond the scope of this chapter. It is interesting to note, however, that the start-up costs were especially underestimated. Frisch and Hofnung, for example, made an analysis of the World Bank's Emergency Assistance Programme that was established immediately after the signing of the DOP. This programme originally focused mainly on rapid economic development and improvement, disregarding the start-up costs for the PA. In practice, however, the majority of the disbursements during the first two years of the programme went to the set-up of the PA and its administration. This lack of attention to the political-institutional element, however, was dealt with in a constructive way due to the flexibility of the Programme.[410]

Appropriate procedures for handling disputes – no procedures available

As it was already discussed above, a dispute settlement arrangement was included in the various Agreements. The problem, however, was that the description of the arrangement was very vague and that there was no explanation of the modalities. The Agreements only referred to 'the appropriate coordination and coordination mechanisms', 'mechanisms of conciliation' and 'arbitration', without defining what this meant in practice: how it would function, what the composition of the committees would be, or what the appropriate period of time would be to reach a verdict. Moreover, the parties have never used the dispute settlement arrangements. Both parties have always opted to simply suspend the implementation of the Agreements in response to a violation by the other party.

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[408] World Bank Operations Evaluation Department (1999), p. 5
[409] *ibid*, p. 3.
[410] Frisch and Hofnung (1997), p. 1247-1249

Efforts to educate and inform the public

After the signing of the DOP, various projects have been launched, aiming at reconciliation between former enemies. From the high-level political to the grass-roots level, problem-solving workshops, dialogues and encounters were organized in an effort to bring people from the two sides together to overcome mutual negative stereotypes.[411] Despite these positive initiatives, it was especially the media that had the largest influence on people's attitudes towards the peace process.

In the initial weeks after the signing of the DOP, the Israeli media were very optimistic and supportive of the government. The political right, however, immediately tried to undermine the peace process. Right-wing organizations, for example, organized two large demonstrations immediately after the announcement of the Agreement. Furthermore, both sides of the political spectrum used frames to explain the challenges for the future. The Rabin government used a 'peace frame', calling for compromises to end the conflict. The political opposition, on the other hand, used a 'security frame', arguing that concessions to the Palestinians would lead to more bloodshed.[412] Gradually, the more popular and sensationalist media adopted the latter frame, focusing on the terrorist attacks that followed the signing of the DOP, while negatively portraying the Palestinian leadership. In such an unstable political environment and a polarized society, the media had a large influence on people's opinions about the peace process. As Wolfsfeld stated:

> 'In sum, a good deal of evidence indicates that the Israeli news media played a mostly negative role in the Oslo peace process. Most of this evidence comes either from those who were directly involved in the process itself or from the journalists who covered it. Almost all of these informants expressed a sense of frustration and anger. Most believe that the Israeli press was more interested in entertaining than in informing, in escalating conflicts than in helping to resolve them, and in cheapening political discourse than in enriching it. The Israeli press appears better equipped to build walls than bridges.'[413]

From the Palestinian side as well, efforts to inform the public were minimal. The influence of the Palestinian leadership on Palestinian media and the leadership's failure to call for true reconciliation has seriously impeded a productive and efficient peace process.

This failure to inform the public in a constructive way has much to do with failing leadership. First of all, the DOP came as a total surprise to the people. The secrecy of the negotiations was an essential element in the success of the

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[411] See for example Maoz (2000) and Mi'ari (1999)
[412] Wolfsfeld (2001), p. 22
[413] *ibid*, p. 28

negotiations in Oslo. However, the exclusiveness of the whole process left citizens from both sides uninformed. Second, leaders from both sides did not succeed in living up to the high expectations by the DOP. Once the Agreement was signed, the political leaders took over the process, but they were unable and unwilling to adopt the constructive approach that had characterized the negotiations. The Agreement was left dead on the table. Third, it was clear that the Agreement was signed by enemies. Both sides blamed each other for not complying with the Agreement and for obstructing the subsequent negotiations, using this as a pretext to halt the implementation process. Violence on both sides continued, thereby making real reconciliation very difficult.

Visual Representation of the implementation of the Oslo agreements

The agreement is politically and legally binding						The agreement s not politically and legally binding
There are effective verification measures						Verification measures are absent or ineffective
Appropriate sanctions are available						There are no or only inappropriate sanctions available
Adequate capacity for implementation exists						Inadequate capacity for implementation
Adequate external support						Inadequate external support
Appropriate procedures for handling future disputes						No or inappropriate procedures for handling future disputes
Public opinion is well-informed						Public opinion is ill-informed

Table 14: Mapping the implementation of the Oslo agreements

Conclusion

The high expectations raised by the DOP were not met. In hindsight, explaining the failure of a peace process is easy of course. But from the result, this outcome could have been predicted to a certain extent, which is what this study has tried to show.

The negotiation process was imbalanced from the beginning, and therefore the outcome too. Despite the constructive atmosphere and the presence of a facilitator who used a non-prescriptive approach and did not allow external interference, the context of the negotiations worked against a workable agreement. The main spoilers of the peace process were excluded from the

negotiations, for the purpose of reaching a limited agreement. The most important issues of the conflict were not dealt with, partly as a result of the asymmetry of the negotiation partners. The result was a non-comprehensive, top-down agreement with large interpretative freedom. There was no reference to a future independent Palestinian state, which would have given the Palestinian people a more positive view about the future. Instead, a semi-autonomous Palestinian Authority was created, with very limited responsibilities and still strongly dependent on Israeli discretionary power.

The inability to agree on concrete outcomes, together with the absence of third party involvement in the immediate aftermath of the negotiation process, effective verification measures, and mechanisms for reconciliation and the creation of a positive future, were an obstacle that could have been prevented. Leaders from both sides were not able and equally unwilling to go beyond the opacity of the Agreements and to use the support they received as leverage for a peaceful future. The changed perceptions of the enemy that resulted from the micro-setting of the negotiations could not be passed along to the wider public. When the political leaders took over the initiative, the Agreements were left dead on the table.

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Annex A: List of important participants in the Oslo negotiations

Even Aas: Research member of the Norwegian research institute FAFO and part of the Norwegian team as aid of Larsen

Mahmoud Abbas (a.k.a. **Abu Mazen**): number three of the PLO who followed the secret meetings from Tunis

Yasser Arafat: Head of PLO

Hassan Asfour: Palestinian communist and personal assistant of Abu Mazen. Member of the Palestinian delegation in Oslo

Yossi Beilin: Israeli vice-minister of Foreign Affairs. Together with Larsen and Hirschfeld he established the Oslo-connection. He was an important intermediary between Peres and the Israeli delegation.

Jan Egeland: Norwegian vice-minister of Foreign Affairs

Maher El Kurd: economist and representative of Arafat in the Palestinian delegation. Toward the end of the negotiations, he was replaced by Mohammed Abu Koush.

Marianne Heiberg: Holst's wife and academic colleague of Larsen. She was part of the Norwegian team.

Yair Hirschfeld: Jewish history professor from the University of Haifa. He established the Oslo-connection together with Larsen and Beilin. Together with Pundak he was responsible for the pre-negotiations. He was a member of the official Israeli delegation until the end.

Johan Jørgen Holst: Norwegian minister of Foreign Affairs, who succeeded Stoltenberg in April 1993

Mona Juul: Norwegian diplomat, Middle East specialist and wife of Larsen. With Larsen, she was the driving force behind the Norwegian team.

Mohammed Abu Koush: Lawyer working for the PLO delegation at the UN in Geneva, where he dealt with economic and social issues. He replaced Maher El Kurd toward the end of the negotiations.

Terje Rød Larsen: Norwegian sociologist and founder of the research institute FAFO. Together with Hirschfeld and Beilin he established the Oslo-connection. He was the head of the Norwegian team.

Geir Pederson: Research member of FAFO and part of the Norwegian team as aid to Larsen

Shimon Peres: Israeli minister of Foreign Affairs

Ron Pundak: professor of history at the University of Tel Aviv. Along with Hirschfeld, he was responsible for the pre-negotiations. He was a member of the official Israeli delegation until the end.

Ahmed Qurei (a.k.a. **Abu Ala**): financial expert of the PLO and head of the Palestinian delegation

Yitzhak Rabin: Israeli Prime Minister

Uri Savir: Director-General of the Israeli Foreign Ministry. Head of the Israeli delegation during the negotiations from May 1993 onwards.

Joel Singer: former colonel of the Israeli army and a successful lawyer. He was added to the Israeli official delegation in June 1993, as the personal representative of Rabin and to make sure that a legal document was being produced.

Thorvald Stoltenberg: Norwegian minister of Foreign Affairs until April 1993, when he was succeeded by Johan Jørgen Holst

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