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THE IMPORTANCE OF PROCESS IN THE SOUTH AFRICAN PEACE AND CONSTITUTIONAL NEGOTIATIONS

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The importance of process in the South African peace and constitutional negotiations

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Much has been said about the content of the South African negotiations in the early 1990s, the resulting interim constitution and the political context. In this *Practitioner Note* I look rather at the management, organization and procedure of those negotiations. I highlight, above all, the importance of the *process* of negotiations. This is generally neglected in the literature. By 'process' I mean an approach that focuses not primarily on the outcome but rather on the way discussions are initiated, planned, executed and followed up.

An interesting feature of the South African process is that there was never any formal mediation from outside parties or the international community. However, many outsiders had an indirect influence on the process at crucial stages, establishing mediative or facilitating circumstances, interventions and organizations. This note is based on my experience as executive director of the Consultative Business Movement (CBM) from 1989 to 1995. The CBM was deeply involved in the process leading up to the signing of the National Peace Accord in 1991. I was subsequently appointed by the main political parties as head of the secretariat of the Convention for a Democratic South Africa (CODESA) in 1991 and head of the administration of the Multi-Party Negotiation Process (MPNP) in 1993. Thereafter I served as deputy director of the Transitional Executive Council. I write from the perspective of someone who was closely involved in the process, but with no formal training as a mediator.

I first provide some contextual background to the peace and constitutional processes. I then describe the structures and outcomes of the peace process, pointing out salient features and lessons to be learnt. After this I discuss the constitutional process in two parts: CODESA and the MPNP. I identify elements of the MPNP (including its procedures and structures) that contributed to its success and list some lessons we can learn from it. I distinguish three phases of the peace process — *pre-negotiations*, *preparatory negotiations* and *negotiations proper* — and then discuss the external and internal mediative or facilitating interventions. I conclude with guidelines extrapolated from the processes described. In sum, these are as follows:

- All relevant parties must make a joint effort to break any deadlock that may prevent negotiations from starting.
- To focus and lower the political temperature, small working groups must be used.
- A distinction must be made between pre-negotiations, preparatory negotiations and negotiations proper.
- The pre-negotiations must identify and address, either consecutively or in parallel, factors that may stand in the way of negotiations.
- The preparatory negotiations must address issues such as the venue for the negotiations, the appointment of the administration and secretariat, the structures of the negotiating process, the name of the process and how exactly the process should work. Some agreement must be reached on the objectives of the negotiation process, and negotiators may need to be trained.
- The negotiations proper must ensure that the majority of parties are visibly committed to the process, regardless of the expected outcomes. In this phase negotiators should use self-imposed deadlines constructively, produce documentation efficiently and timeously, set objective (often international) criteria to break possible deadlocks, and continuously build personal relationships and trust across party lines. A mediator or facilitator should help the parties to distinguish between their positions, their interests and their needs. The deadly mediation sins of haste, arrogance, ignorance and inflexibility must be avoided (Nathan 2014).

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Background to the South African peace process and constitutional negotiations

It is generally acknowledged that the first cracks in the apartheid system appeared in 1976 with the Soweto youth protest. The African National Congress (ANC) in exile claimed credit for this uprising and the National Party (NP) government reacted with stern measures that did not, however, quell the resistance. When the government used the 1983 general (but whites only) election to get a mandate to establish a tricameral parliament, thereby including so-called coloureds and South Africans of Asian descent, but cementing the exclusion of Africans, the resistance increased. Internal organizations, ranging from labour unions to community organizations, formed the United Democratic Front (UDF) to channel the resistance. The UDF was, cleverly, established in such a way as to make it very difficult for the government to ban it as an organization.

The mid-1980s therefore saw conflict increasing in South Africa. The ANC's armed struggle intensified and the apartheid government's war against Swapo and its Angolan allies began to sap the energy of the South African armed forces. The then president, PW Botha, responded to the internal resistance by building a sophisticated security bureaucracy and declaring repeated states of emergency, giving the state (including the military) almost unlimited powers. The international community responded by putting pressure on the apartheid government, including financial sanctions that hurt the government and the economy as a whole (Nathan 2004). Botha's intransigence gave no hope to reformed-minded members of the government and when he suffered a stroke he was asked to step down as president.

The then Minister of Education, FW de Klerk, was appointed as his successor in 1989. At the time seen as a conservative, De Klerk surprised even his closest allies by unbanning the main political organizations and, on 2 February 1990, releasing almost all political prisoners. Much has been written about the driving forces behind De Klerk's decision (see Sparks 1994), but it can be assumed that contributing factors were the unlikelihood of a military solution (for either side), the bad state of the economy and the mounting international pressure (even from benign countries). On top of the internal pressures that led to this decision, the fall of the Berlin Wall and the international discrediting of communism made it easier for De Klerk to take this brave and dramatic step. He himself also cited the moral correctness of his decision, although he has consistently denied undergoing a Damascus conversion (De Klerk 2015).

All of the above set the scene for a period of transition. Discussions between the ANC's leadership in exile and the government's intelligence service had already started before 2 February 1990. Sparks (1994, 116 ff.) describes some of the processes behind the scenes. These discussions now became more focused, dealing with issues such as the return of exiles and planning for the first meeting between the ANC leadership and the government inside South Africa.

In an atmosphere still filled with tension and mutual suspicion, the first meeting took place from 2 to 4 May 1990 at Groote Schuur, an official house at the foot of Table Mountain in Cape Town. It resulted in the 'Groote Schuur Minute', an accord detailing agreements that would facilitate the release of political prisoners, the return of exiles and the amending of security legislation. At the next meeting in Pretoria on 7 August of the same year, Nelson Mandela announced the unilateral suspension of the ANC's armed struggle (Sparks 1994, 124).

The scene seemed to be set for more substantive negotiation, but the question remained: how was this to be done? As a liberation movement waging an armed struggle, the ANC had no experience of such negotiations. The UDF had some experience in negotiations in the labour arena. The NP government did not have outstanding negotiation skills. Despite the progress made in the abovementioned accord between the government and the ANC, the biggest stumbling block was the violence that was still plaguing the country and, linked to that, the state of emergency in the province of Natal. The major parties — the ANC, the Inkatha Freedom Party (IFP) and the government — blamed each other for the violence. It was clear that no constitutional negotiations would be possible until the violence had been addressed, including the role of the armed forces (on both sides).

The peace process (March — September 1991)

Background

The South African church community found rare unity on a number of issues at a national conference of church leaders at Rustenburg in November 1990. The Rustenburg Declaration denounced apartheid and called for a democratic constitution and a more equitable distribution of wealth. The churches were urged to denounce all forms of violence. A commitment was made to establish a committee to coordinate church efforts and call a peace conference of all political, business, labour and church leaders to put an end to violence. Shortly after this, the South African Council of Churches also offered to call a peace conference. The politicians, for a variety of reasons, did not respond enthusiastically to these offers.

The CBM also made efforts to help end the violence, seeing it as detrimental to the economy and the negotiations.¹ It held several low-key meetings with the government, the ANC and the IFP in March and May 1991.

President De Klerk's peace conference

Even though the ANC and its allies blamed the government security forces and a 'third force' for the violence, on 18 April 1991 De Klerk called a multi-party conference to discuss ways to address the violence. Several parties and groups welcomed this, but the ANC and its allies rejected the unilateral way it was convened and pressed for an independent party to convene it, as the government was itself allegedly involved in violence. After much shuttle diplomacy by church and business leaders, the ANC accepted that the De Klerk conference could go ahead as part of an ongoing process leading to an inclusive conference later.

The conference took place on 24 and 25 May 1990 in Pretoria. Dr Louw Alberts, the co-chairperson (with the Reverend Frank Chikane, a leader of the South African Council of Churches), was appointed by the conference with consensus as a one-person facilitating committee for the second, inclusive peace conference. His appointment received wide support, even from the ANC. Alberts was a past chairperson of the Atomic Energy Board and influential in Afrikaner church circles. He was given the power to include other members to make the committee more representative (Gastrow 1995, 16, 25).

The process leading to the National Peace Convention

The appointment of Alberts formally established the facilitating role of church and business leaders in this process. Political parties were deadlocked and realized that they could not go it alone. After Alberts had consulted with church and business leaders who had been part of the earlier discussions and shuttle diplomacy, a 13-person facilitating committee was formed. This consisted of church and business leaders across the spectrum, many of whom were also acceptable to the various political parties. The CBM was also represented, and would later be tasked with the secretariat and process arrangements for the Convention. Labour leaders were consulted and played an important role behind the scenes.

A preparatory meeting for a peace summit was set for 22 June 1991 at the corporate headquarters of one of South Africa's biggest companies, Barlow Rand. All political parties as well as trade unions and community groups were invited to the meeting. The only parties that refused to attend were three right-wing parties. This was the first time that the major parties — the ANC, the government and the IFP — had sat down around one table to discuss violence and related issues.

An important feature of this meeting (and this trend would be followed later) was that the leaders of the political parties were not themselves present. This meant that they were not forced to face each other and make positional statements, thereby possibly harming the process. Those who attended on their behalf had mandates to engage in discussions towards solutions. The meeting was closed to the media. About 120 people attended, representing

¹ The Consultative Business Movement was not a traditional employer body. It was a loose group of 40 progressive business leaders who understood that unless violence was addressed and a democratic government elected, the economy and the country would suffer even further. Not being a traditionally mandated business organization, the CBM specialized rather in facilitating discussions through consultative processes, hence its name. After the 1994 election it merged with another business-based organization to form the National Business Initiative (NBI), mobilizing business resources and facilitating support from business for the new South Africa.

about 20 organizations. Archbishop Desmond Tutu co-chaired the meeting with a senior business leader, John Hall, who would later become the chairperson of the National Peace Committee.

After taking some time to identify the causes of the violence, the meeting agreed to appoint working groups and aim for a representative peace conference in the near future. A preparatory committee was appointed to consider the information presented and to set up the working groups to draft proposals on how to end the violence. This committee consisted of a facilitating committee and three members each from the ANC, the government and the IFP.

At the first meeting of the preparatory committee Hall was elected chairperson, the process was agreed upon and five working groups were appointed. These each consisted of three members of the ANC-led alliance, three from the government, three from the IFP, one religious leader and one business representative. The working groups' themes were:

- Code of conduct for political parties
- Code of conduct for security forces
- Socio-economic development
- Implementation and monitoring
- Process, secretariat and media.

The secretarial backbone and coordination were assigned to the CBM and funding was made available by the government. Each working group produced draft documents which were referred first to the various principals for approval and then to the negotiators, after which fresh consensus would be sought for the next draft (Gastrow 1995, 32).

The preparatory committee set 14 September 1991 as the date for what was termed the National Peace Convention.

The National Peace Convention

All the political parties, apart from the three right-wing parties, attended the convention in Johannesburg. All the parties that attended signed the National Peace Accord, with the exception of the Pan Africanist Congress (PAC) and the Azanian People's Organization (AZAPO), which nevertheless declared their support for the spirit and objectives of the accord. This accord contained chapters on:

- The principles of the accord (with a number of references to fundamental rights)
- The code of conduct for political parties and organizations
- Security forces: general provisions and police code of conduct
- Measures to facilitate socio-economic reconstruction and development
- The establishment of a commission of inquiry regarding the prevention of public violence
- The establishment of the National Peace Secretariat, with regional and local dispute resolution committees
- The establishment of the National Peace Committee
- Arrangements for enforcing the peace agreement between the parties
- The establishment of special criminal courts.

Salient features of and lessons from the peace process

Features

- Because of historical and external circumstances, the political parties (including the government) were unable to break the deadlock on the issue of violence.
- The three major parties (the ANC, the government and the IFP) displayed some remarkable openness, which helped the parties to explore the potential of the process, but it was clear that a government that was suspected of being part of the problem could not break the deadlock on its own.
- Neither church, business nor labour, each having its own political baggage, was acceptable or credible enough to win the support of the major parties for the deadlock breaking role on its own.
- Through a joint intervention by the churches and a business group (assisted by labour), focusing strongly on a transparent, open and inclusive process, the deadlock was broken.
- Individuals from all sides were included, none of them a mediation professional or practitioner but most having some experience in dispute and conflict resolution in either labour or community matters.

- The presence of business, church and labour organizations in the working groups helped the politicians to focus not on the ultimate prize (winning an election) but on searching for a mutually acceptable process to deal with the violence in the country.
- Small working groups followed an iterative process that often went on and on until agreement was reached.
- The role of the CBM was crucial. In the preceding two years it had facilitated workshops between business leaders, labour leaders and members of the UDF. Its staff had learnt the value of 'process'. A case in point was the process followed to get from the preparatory committee on 22 June 1991 to the signing of the National Peace Accord on 14 September 1991. On 22 June the parties made typical positioning speeches, blaming each other for the violence. During a break, one of the CBM staff members drew a process map. It showed a path from the De Klerk conference to a national peace conference, using a representative steering committee and working groups each focusing on an identified problem that had to be addressed. When co-chairperson Archbishop Desmond Tutu shared the map with the meeting it was rapidly accepted in principle.

Lessons

From the above features we can extract the following lessons. The importance of including and giving a role to individuals from all sides cannot be overemphasized. The use of small working groups consisting of a variety of organizations can help to lower the political temperature, focus attention on issues separately rather than on the whole complicated problem, and enable step-by-step progress. Referring agreements by the working groups to the political principals provides a certain measure of safety to all concerned. Finally, it is vital to get negotiators and mediators to focus on process rather than just outcome. The CBM's 'process thinking' was alien to most political groups, but it was crucial for the successful signing of the National Peace Accord.

Implementation of the National Peace Accord

The National Peace Committee and the National Peace Secretariat, the two bodies established by the National Peace Accord, started their work soon afterwards.

The Peace Committee consisted of representatives of the original process. It had to monitor the implementation of the Peace Accord, resolve disputes over contraventions of the code of conduct for political parties² and assume responsibility for socio-economic reconstruction and development (Gastrow 1995, 44). It was chaired by John Hall, the then president of the South African Chamber of Business. The vice-chairperson was Stanley Mogoba, president of the Methodist Church of South Africa.

The Secretariat, constituted only in November 1991, consisted of one member each from the ANC alliance, the Democratic Party, the IFP, the Labour Party and the NP, as well as a member of the Department of Justice and a member of the legal profession. This last was Antonie Gildenhuys, partner in one of the top legal firms in Johannesburg and a past president of the Transvaal Law Society. The Secretariat's main task was to set up regional peace committees, which then set up a national network of local dispute resolution committees consisting of political, church, business and community representatives. This process was difficult, as almost every local dispute and tension held up the establishment of the committees. Gastrow (1995, 53) notes that two years after the signing of the Peace Accord, 11 regional peace committees and 180 local dispute resolution committees had been established.

As Gastrow (1995, 93–5) observes, the signing of the Peace Accord enabled the political parties to move on to the constitutional negotiations — one of its main successes — but political violence increased rather than decreased after the signing. The tasks of the Peace Accord, and the peace structures it created, were to mitigate violence, contribute to democratization by bringing together former enemies, and provide neutral forums where local political issues could be discussed and addressed (Gastrow 1995, 94).

² This code of conduct was established in terms of the Peace Accord, promoting political tolerance and urging parties to condemn violence publicly (Gastrow, 1995:44).

The South African constitutional negotiation process (December 1991 – November 1993)

The CODESA process

The signing of the National Peace Accord and its implementation did not immediately lead to constitutional negotiations. The ANC and the government still had to resolve a number of issues between them. And trust had to be strengthened. Earlier, the government had publicly stated that it wanted a convention of existing political parties to meet to negotiate the future constitution. The ANC, on the other hand, wanted an elected and therefore legitimate constituent assembly to do this. The two parties remained far apart in their views.

Despite this, agreement was reached to start constitutional negotiations in December 1991. On 21 and 22 December 1991, after some preparatory work, the first CODESA plenary took place at Kempton Park near Johannesburg. It was meant to proclaim to the nation that 19 political parties had agreed to start the process of constitutional negotiations. The two-day meeting experienced a few setbacks (including a public fall-out between NP President De Klerk and ANC President Mandela); nevertheless, serious negotiations started in early 1992.

The negotiations were conducted in five working groups, on the model of the peace process. These groups, each consisting of four representatives of each political party, were to give feedback to a representative management committee but soon exhibited resentment of that committee. This meant that no central body existed where multi-party agreements could be tested and taken forward. The working groups almost became a law unto themselves. In the end only one of them (Working Group 3), dealing with the issue of an interim government, produced agreements that would later be built on in the post-CODESA process. The result of all this (and other factors, discussed below) was that the CODESA 2 plenary never took place. The CODESA process ended in deadlock and, after the Boipatong massacre on 17 June 1992 (see below), the ANC formally withdrew from the constitutional talks.

With hindsight, we can see major political reasons why CODESA failed: the nature of the transition, the percentage needed to change the future constitution, the form of state (and the powers of the regions), the protection of minorities, and the parties' continuing distrust of each other. But we can also see flaws in its structure and process, particularly the following:

- Five working groups with no central negotiating body was an unworkable structure. With almost 80 members each, these groups were too large to do any serious negotiating. The parties stated their position on various subjects on paper and then orally. This process was geared towards grandstanding and merely entrenched the parties' positions, especially after the media had published the presentations. There was therefore little leeway for compromise.
- The working groups consisted entirely of politicians — no provision was made for technical expertise. Only Working Group 3 used technical input, and it was the only one that reached some form of agreement. The politicians were not yet sufficiently skilled or experienced to make the process work.
- The overall administration of CODESA was perceived as party-political, with only the three biggest parties taking part in it (and only two, when the IFP left). The daily management committee, a small committee charged with coordinating the various processes, was similarly suspected. The CBM was limited to functioning as a secretariat, reporting to the politicians heading the administration.

Clearly there was no mechanism for seeking compromise or breaking deadlocks. These flaws did not in themselves make CODESA fail, but they did not help it succeed either. They became a warning to be heeded when the next round of negotiations was due to start.

The Multi-Party Negotiation Process (MPNP)

Background

Shortly after CODESA deadlocked, several incidents of violence took place, all of which indicated growing polarization not only between but also within parties. The most damaging was the massacre of more than 40 people (among them women and children) in the Boipatong township on the East Rand on the night of 17 June 1992 by a group of armed Zulus from a steelworkers' hostel. The apartheid armed forces were widely suspected

of complicity. On 7 September of the same year, in an attempt to topple the hated 'homeland' system, the ANC organized a march in Bisho, the capital of the Ciskei homeland. What had been planned as a mass peaceful demonstration became a massacre when the Ciskei armed forces opened fire on the marchers, killing 28 people and wounding 200.

Trust between the ANC and the government was at an all-time low. The only communication that took place was informal phone calls and meetings between the two chief negotiators, Cyril Ramaphosa of the ANC and Roelf Meyer of the government. This led to a bilateral summit on 26 September in Johannesburg, resulting in a Record of Understanding between the ANC and the government – it was evident that they had realised an election must be held as soon as possible to end the violence and save the economy. The agreements in the Record of Understanding were cemented by the two parties at two *bosberade* ('bush meetings') in December 1992 and January 1993. These led to an all-party planning conference on 5 and 6 March 1993. Twenty-six parties now took part and careful planning went into the process this time, lessons having been learnt from the flaws in the CODESA process. The MPNP therefore started with structures very different from those of CODESA.

The improvements did not, however, shield the process from some major crises during 1993: the assassination of the South African Communist Party leader Chris Hani on 10 April, a police raid on the offices of the PAC on 25 May, a violent invasion of the negotiation venue (the World Trade Centre in Johannesburg) by a group of right-wing militants on 25 June, and the massacre of 12 churchgoers on Sunday 25 July. But it seemed that rather than disrupting or slowing down the process these crises actually strengthened the major players' determination to speed up the process (Sparks 1994, 189).

The major political issues that had to be resolved were not different from those in CODESA. The technical committees (see below) focused on seven issues:

- Constitutional issues (including the form of state and the powers of the regions)
- Violence
- Fundamental human rights
- The Transitional Executive Council
- The Independent Electoral Commission
- The Independent Media Commission
- Discriminatory legislation.

The process worked well and an interim constitution was accepted by the Negotiating Council in the early hours of the morning of 18 November. The election date was set for 27 April 1994 and an Interim Government of National Unity would govern until the next election in 1999.

Elements that contributed to the MPNP's success

The structure of the MPNP

The way the negotiation process was structured (see Figure 1) was fundamental for its success.

The *Plenary* was set up to confirm agreements reached by the negotiating bodies, and in fact confirmed the final agreement. The plenary met only once, in November 1993, when the interim constitution was formally accepted.

The *Negotiating Forum* had a short life. As the second highest body, it was set up to publicly finalize the agreements of the initially smaller and initially closed Negotiating Council. However, when the Negotiating Council was enlarged to two delegates and two advisers per party, and opened to the media, the need for the Forum fell away and it delegated all its powers to the Negotiating Council at its second and final meeting in June 1993.

The *Negotiating Council*, consisting of two delegates and two advisers per party (one of whom had to be a woman), became the main negotiating forum. After receiving reports from various bodies, it debated the issues and reached agreements or accepted the recommended agreements. These then found their way into the draft interim constitution and various draft Bills.



Figure 1: The structure of the Multi-Party Negotiation Process (MPNP)

Source: Eloff, 1994

The Negotiating Council received reports from the *Planning Committee*, a body consisting of prominent negotiators serving in their individual capacities, but nevertheless spanning the political spectrum. The Planning Committee was extremely important because its members accepted joint responsibility as ‘guardians’ of the process. And although this Committee was not mandated to make decisions on any substantive matters, its role in pre-empting and averting problems was a decisive factor in the success of the MPNP.

The Negotiating Council also received regular reports from seven *technical committees*, consisting of non-party political ‘experts’ who were nevertheless acceptable to the negotiating parties (and often suggested by them). They spanned the professional spectrum, but most were from the legal profession. The worst flaw of the CODESA process — no technical input, or very little — was thus avoided. A further improvement was that instead of putting their positions orally to each other in the Negotiating Council, political parties made written submissions to the technical committees, thereby avoiding grandstanding and entrenching of positions in public. Most of the technical committees’ reports to the Council already contained the seeds of compromise and were interest-based (as opposed to fixed-position) proposals. In this way, the technical committees, although formally prohibited from ‘meddling’ in political decision-making, acted as a *compromise-seeking and deadlock-breaking mechanism*. In the few instances where technical committees could not come up with an acceptable compromise, the matter was dealt with either by the Planning Committee or by an ad hoc task group consisting of both technical committee members and politicians.

A fairly informal and less known ‘structure’ of the Planning Committee was the so-called ‘sub-committee’, consisting of Mac Maharaj (ANC), Fanie van der Merwe (NP government) and Ben Ngubane (IFP), who left the committee when the IFP withdrew from the process. Without overstating the case, it can be said that this sub-committee did as much as, and more than, any other body to keep the process on track. Acting as ‘trouble-shooters’, advisers, shuttle diplomats and strategists, and keeping a low profile, they were effective in helping to resolve almost any issue. They acted as the ultimate deadlock-breaking mechanism.

Another relevant structure was the *Administration and Secretariat*. The lessons from CODESA had been learnt and politicians were omitted from the administration in favour of the CBM, which was contracted on a not-for-profit basis to provide administrative and secretarial services to the entire process. The CBM provided the core staff and the parties also nominated persons with the necessary skills. The personnel were therefore non-partisan and acceptable to all parties. The experience of the CBM in the peace process and CODESA could be put to good use. The head of the administration, seconded from the CBM for this purpose, was expected to act objectively toward all parties, but also had a mandate from the major parties (and the Planning Committee) to report timeously any difficulties that might harm the process. The fact that all participants could trust the administration, the secretariat and the production of agendas, minutes and reports contributed to a successful process.

The processes of the MPNP

The most important process was the constant *flow of reports and subsequent referrals* between the technical committees and the Negotiating Council, through the Planning Committee. This allowed for increasing clarity and consensus seeking. The processes of the MPNP were designed to be as *flexible and informal* as possible. In the Negotiating Council's meetings, debates were to the point and focused on the issues at hand. Time limits were rarely imposed.

This flow was made possible by excellent rotating Chairs, drawn from a panel of eight appointed by the Negotiating Council from the ranks of the parties and known for their skills in chairing meetings. A person would be deputy Chair one day and Chair the next, thereby ensuring some continuity. The MPNP developed its own unwritten 'code of conduct' and participants were held to it. One or two government ministers had to learn this the hard way when they attempted to use the more robust parliamentary manner of speech in the Council's meetings.

In the interests of *transparency*, the media and diplomatic liaison officers were allowed to attend meetings of the Negotiating Council. The public also benefited from the greater transparency by being given the opportunity to submit proposals to any technical committee (and to the commissions on the demarcation of provinces and national symbols) on a variety of issues. If members of the public wanted to witness the proceedings, the administration provided a 'media overflow' room with television monitors. Various youth groups and researchers made use of this facility.

One of the most important factors in ensuring success, though not a structured process, was the building of *personal relationships and trust* between the negotiators. This resulted from working long hours to reach a deadline, sharing the danger of an attack by right-wingers and experiencing the sweet taste of success through mutually acceptable compromise. These relationships and trust helped the process when the inevitable challenges arose.

Unlike CODESA, the MPNP did not expect large groups of party politicians to negotiate complex issues. Instead, the technical committees received written submissions from parties and sought compromise and consensus. These were then reported to the Negotiating Council, but only after the Planning Committee had noted the content and the processes that had been followed. The 'sub-committee' referred to above also helped here. Extreme differences would sometimes be addressed by the ANC and the government outside the formal negotiations, in the informal setting of a *bosberaad*.

Much of the success of the MPNP was attributable to what can be called a 'process alliance' between the two main parties. For very different reasons, they agreed on a speedy resolution of the constitutional issues, the drafting of an interim constitution and an election date. Most other parties also agreed to these, and could not be said to be 'outside' the process. It was really only the IFP and to some extent the more conservative parties that felt alienated. And in the end all parties participated in the April 1994 election.

The politicians also became more sensitive about and skilled in 'process management' in the MPNP. They realized that it was in the interest of the process to help all parties to manage their constituencies. For example, when the NP government was under pressure from its conservative members, the ANC tacitly supported a 'whites only' referendum to enable the government to return to the negotiating table. Similarly, after progress had been made or major breakthroughs achieved, media conferences were held, at first jointly and then by the parties separately, to help the parties to manage their constituencies.

The costs of the process (as with the peace process and CODESA) were largely carried by the government. These costs included transport to and from the World Trade Centre, accommodation and meals. The parties carried their own staff costs and administrative costs (such as preparing of inputs), and the administration provided all secretarial services on site (such as photocopying and faxing) free of charge.

Lessons from the peace process and the MPNP

The pre-negotiations

Parties to a conflict or a major difference of opinion should first come to realize, or be helped to realize, that what they are experiencing is sub-optimal, and that a better state of affairs is possible. This is often the most difficult

step, because the party in power is not likely to acknowledge this easily. The aggrieved party is likely to use any means at its disposal to put pressure on the oppressor, often even violence. The ANC had tried since the mid-1950s to get the apartheid government to listen to their concerns. It was only in 1989, after many lives had been lost on both sides, that De Klerk accepted that the system of apartheid was unjust and would never be sustainable. He consequently became willing to negotiate, and demonstrated this willingness by releasing political prisoners and unbanning his future negotiating partners.

In South Africa, the violence that plagued the country was the main stumbling block for constitutional negotiations. No party on its own can break a vicious circle of violence and counter-violence. In some cases, but not all, the international community may be able to help. In South Africa it was a joint effort from churches, business and labour that brought the parties to the table.

Violence may be the main barrier to negotiations, but there are others. In a complex situation, many factors may be both cause and effect of the conflict. To manage complexity, negotiators must identify and address these factors either one at a time or in parallel. In South Africa these factors were linked to the violence, but also included socio-economic underdevelopment. The parties realized that unless material circumstances improved for the majority of citizens, violence might continue indefinitely. The MPNP therefore emphasized issues of the constitution and transition, including issues linked to the planned election. But it also still had violence on the agenda, as well as discriminatory legislation. At any given time in a process a number of issues will be immediately relevant, some carried over from the past and some in preparation for future processes. The mediator or facilitator must understand that in a complex situation these issues are never 'finally' resolved.

At an early stage it must be agreed who will carry the costs of the negotiations. If this is not done it could hinder progress.

The preparatory negotiations

Once parties are in principle willing to negotiate, the 'rules of engagement' must be agreed upon. Conflicting parties may be in an understandable hurry to start negotiating the substantial issues, but failing to agree on the 'process' issues first could limit their ability to reach a sustainable agreement on the more difficult issues. The following are some points that this preparatory phase of negotiation must take into account:

- A *venue* for negotiations can be highly symbolic, either positively or negatively. In the South African process, the urgency outweighed the need for symbolism. Johannesburg's World Trade Centre was essentially a glorified warehouse, but it was a neutral venue, and it did have the advantages of being conveniently situated near the airport and adjustable to suit the needs of the parties.
- The *administration and secretariat* must be agreed on before other issues. Again, a government department or consultancy working for one of the parties is not ideal for gaining acceptance and trust. An international agency may be suitable, but ignorance of local circumstances could be a hindrance. A church, community or business-based organization (or a combination of the three) may be the best option. In South Africa, a track record of facilitating meetings with the political actors before the peace and constitutional processes started made CBM an ideal choice. The person heading the administration should have personal credibility and be able to gain and keep the trust of the parties. The mediator (if there is one) should preferably not also be the administrator, because that would cause role confusion amongst the participants.
- The *structures* of the negotiating process must also be agreed on beforehand. Sometimes trial and error is inevitable — CODESA is a case in point. The way the structures are set up also has to do with the negotiation maturity of the parties. A wise practitioner may be able to advise the parties, but they will still have to experience the process for themselves. Sometimes pressure from immature but eager negotiators will make the choice of structures difficult. The following lessons from the South African experience will help:
 - Keep the structure simple by having only one negotiating body and one additional body that will ultimately accept the negotiated agreements publicly.
 - Use technical experts, in small committees to avoid grandstanding, who will send reports of recommended agreements to the negotiating body.
 - Establish a low-profile but trusted 'coordinating committee' of respected individuals from each of the parties to be 'guardians' of the whole process but without authority to take substantive decisions.
- The *name of the process* may seem an innocuous issue, but it could affect the credibility of the outcomes or be a problem if a process fails and the parties decide to start afresh. It took weeks of arguing to compromise

on the generic (and fairly unimaginative) 'multi-party negotiation process' (MPNP), because some parties felt CODESA was a failure and the name should not be used again.

- Not giving enough thought to how the process should work, and 'stumbling' into the first meetings without agreeing on this formally, could be a severe test for the process. The following guidelines should be followed:
 - First determine how *decisions* should be made: by majority vote, by consensus, or something in between. If there are only a few parties, consensus may be the best choice. On the other hand, where there are many parties differing in size and influence, a small party may hold the whole process to ransom by not accepting even the most straightforward agreement. With exactly such a scenario in South Africa, the mechanism of *sufficient consensus* was applied. This meant that if a recommendation was supported by enough parties to take the process forward, that was sufficient consensus. In practice, this meant that when the ANC and its allies agreed with the government and its allies, there was sufficient consensus. This, however, can alienate some parties and make them withdraw from the process — as happened with the IFP and the right-wing parties. The sufficient consensus rule should therefore be applied circumspectly.
 - Determine how the recommendations will arrive on the table of the main negotiating body. It is untenable to have a large group of politicians trying to reach consensus on complicated issues. The *technical committees* in the South African process worked well. The various parties made written submissions to these committees, and in closed meetings they debated the issues, looking for points of agreement and formulating possible compromises. The members of these committees are aware of the various viewpoints and serve as a first consensus-seeking mechanism
 - Set up an *iterative process*. The parties discuss the proposed agreement at the main negotiating body, and if they do not agree it is referred back for a second round. This iterative process should be formalized, to prevent any grandstanding or public deadlocks.
 - Decide whether the *media* should be present in the negotiations to make the process *transparent*. On the one hand, complex issues cannot be negotiated in public; on the other, any process should be transparent enough to be credible and gain the public's trust. A balance is to have the media attend the meetings of the main negotiating body only. Regular media conferences worked well in the South African process.
- The parties should agree beforehand on *deadlock-breaking mechanisms* so that seemingly irreconcilable differences do not jeopardize the whole process. These could take the form of bilateral or trilateral meetings between the main parties, outside the formal process. The parties could follow some form of arbitration or mediation, using trusted individuals inside or outside the process. *Trust building mechanisms*, such as structured socializing by the negotiating parties, must become an integral part of the process. Informal breakaways at crucial times, with appropriate refreshments, were a vital underlying factor in the South African process.
- Before formal negotiations can begin, there should be at least partial agreement on *the objectives of the negotiation process*; not on the substantive outcomes — that would obviate the need for negotiation — but on the outcomes of the process. In the South African case, the objectives were to negotiate an interim constitution and pave the way for democratic elections in terms of that constitution. That put the negotiators on the same page.
- A sensitive issue is whether it can be taken for granted that politicians know intuitively how to negotiate effectively. Often they do not. *Preparation of the negotiators* is important — they may need to be trained in negotiation principles, by the parties or by an outside person or organization. No sustainable solution can come from 'horse-trading' (grandstanding, positioning and destroying the opponent). It can only come from negotiating on the basis of certain principles: looking for compromises, putting oneself in the other party's shoes, generating options to work with, and so on. A little known influence in the South African process was Harvard professor of constitutional law, Roger Fisher, who offered to host workshops on *principled negotiation* for the main parties. The government and the ANC accepted, the IFP and the right-wing parties did not. It was clear throughout the process that the former two parties had an advantage over the others in applying negotiating techniques.³

³ Fisher's seven principles for effective negotiating are as valuable today as they were in the historic Camp David agreement between Egypt and Israel (Fisher & Ury 1981):

- Separate the people from the problem: build relationships.
- Focus on interests, not positions.
- Invent options for mutual gain.
- Use objective criteria.
- Develop your BATNA (best alternative to a negotiated agreement).
- Ensure well-crafted and executable commitments.
- Communicate constructively what was intended to constituencies.

The negotiations proper

Negotiation processes differ from country to country. The South African process has its own particular lessons to offer:

- The majority of the parties must be visibly committed to the process, regardless of the expected outcomes. This was true of the ‘process alliance’ between the ANC and the government.
- The complexity of such negotiations must be actively managed. For example:
 - There must be clarity on the overall objective. This can be achieved by breaking down the ‘big issue’ into its constituent parts and addressing each of them in the correct sequence. If a common vision of the future can be created, compromises are possible.
 - Negotiators must keep an eye on the goal and not be distracted by external events over which they have no, or little, control. The multiple crises that hit the South African process, such as the assassination of a prominent leader, could easily have derailed it. The fact that the parties actually speeded up negotiations despite the assassination meant that they were keeping their eye on the ultimate goal.
 - Flexibility and adaptability are also important. If the parties sense that their constituencies need more information or support, they should take time out to attend to it.
 - In complex situations, parties should use constructive ambiguity optimally. This means purposefully leaving formulations in agreements vague and open to interpretation, to enable progress. If negotiators insist on the exact wording of a resolution, some parties may not be able to agree to it – even ‘in principle’. At a crucial and sensitive point in the process, it may be more important to keep the parties in the process than to score points.
- Deadlines (especially when self-imposed and not dictated by external parties or circumstances) should be used constructively, even if they seem unrealistic. They can focus the negotiators’ minds and make progress possible. If running over deadlines becomes a habit, the process will lose its integrity.
- In the hurly and burly of negotiations, with issues being referred back and forth, and late-night deliberations, it is of the utmost importance that the documentation (reports, agendas and minutes) is managed accurately and provided on time, so as not to delay the process at crucial moments.
- In the event of opposing sides nearing a deadlock on an issue, it is always better to look for objective (often international) criteria that have already been used to resolve such an issue. An example is the two-thirds majority that was needed before the new South African constitution could be changed.
- A softer issue, but nevertheless important, is the continuous building of personal relationships and trust across party lines and the creation of a sense of belonging and contributing to the process, by means, for example, of structured social interaction.
- The parties must be willing to participate in an iterative process to seek the strongest possible consensus. Fisher and Ury’s four-quadrant analysis (what is the problem, what are its causes, what possible approaches are there and who should do what tomorrow) is a valuable tool (see Table 1).

Table 1: Four-quadrant analysis

| | Past | Future |
|---------|--|---|
| Theory | <p>Quadrant 2: General diagnosis (causes)</p> <p>Possible reasons why the problem has not been solved Possible causes (about which someone can do something)</p> | <p>Quadrant 3: General approaches</p> <p>Possible strategies to solve the identified problem</p> |
| Reality | <p>Quadrant 1: What is wrong? (problem)</p> <p>Perceptions of:</p> <ul style="list-style-type: none"> • Something we don’t like • Idea of ideal situation and the gap between the two | <p>Quadrant 4: Action ideas (next steps)</p> <p>Ideas about who will do what tomorrow to put a general strategy in place</p> |

Source: Adapted from Fisher & Ury, 1981.

- A mediator or facilitator should help the parties to distinguish between their positions, their interests and their needs. This clarification will bring to light new options and possibilities of synergies (Nathan 2014, 10).
- It must be understood that in complex negotiations there are no quick fixes. The South African process, although pushed hard by the ANC and the government in the last phases, had to learn this the hard way when CODESA deadlocked and violence increased.
- Nathan (2014) calls attention to two important lessons to be learnt from the South African process. One is the *planning* for negotiations, which is closely linked to the preparatory phase discussed above. This could be done by the parties (as it was in South Africa) or by the mediation team in consultation with the parties. The other is the *capacity* of the mediation team, which to some extent has to match the complexity of the process. In South Africa the administration was well equipped to provide a good service to the process.

External and internal mediative or facilitative interventions

In the South African process there was never any formal mediation from outside parties or the international community. South Africans, through trial and error, decided to 'do it themselves'. The one attempt to establish a panel of international mediators on the form of state (unitary versus federal) did not materialize (Odendaal 2014; Saunders 2014). Under the leadership of Henry Kissinger, that team left on the same day it arrived.

By far the majority of the parties did not want to use international or other mediators. Perhaps the reason for this may be found in the international situation of the time. Global circumstances made the Western powers unacceptable to the ANC because they were seen to be on the side of the government. And although communism was dying, the Eastern Bloc countries were falling apart and were unacceptable to the government.

It remains true, however, that many outside parties had an indirect influence on the process at crucial stages, introducing mediative or facilitating circumstances, interventions, organizations and individuals. Enough has been said about the role of the churches, labour and business. Friedman (1994, 167) mentions one indirect intervention. During the period of deadlock between CODESA and the MPNP, the CBM convened (with the tacit support of the three major parties) a panel of national and international constitutional experts, broadly acceptable to all parties. The panel was asked to advise on the powers of the regions that would emerge from the negotiations. The ensuing report was produced and presented in a non-threatening manner to the main parties. It was used by its authors (most of whom were also appointed to the technical committees) to de-fuse the issue of the powers of the regions and the formulation of the report was incorporated almost unchanged into the interim constitution.

The diplomatic community also played an indirect but often important role, using diplomatic channels to convey messages to and from the international community.

Finally, it must be noted that some elements of the process were inherently mediative or facilitative, such as:

- The intervention by the churches and business (assisted by labour) to break the political deadlock over violence.
- The use of the technical committees in the MPNP as a consensus-seeking and sometimes deadlock-breaking mechanism.
- The iterative way in which the technical committees' reports went via the Planning Committee to the Negotiating Council, which could refer them back to the Planning Committee, the technical committee, or even the 'sub-committee'.
- The head of the administration's unofficial mandate to be on the look-out for issues that could hinder or harm the process and report them to the main parties' lead negotiators.
- The panel of rotating Chairs that ensured trust in the objectivity of the formal meetings.
- The practice of using sufficient consensus as the decision-making mechanism so that voting was not polarized.
- The building and maintaining of personal relationships and trust (over time).
- The fact that the two main parties had some training in principled negotiation.

Conclusion

The history of the South African peace process shows that when political parties cannot break the deadlock over an issue such as endemic violence they must seek help elsewhere, from groups such as business, labour or the churches. The CBM's 'process facilitation' was invaluable. Smaller working groups drawn from various organizations helped to lower the political temperature, focus on the issues separately, and make step-by-step progress.

We can distinguish three phases of the South African constitutional process: pre-negotiations, preparatory negotiations and negotiations proper. In the *pre-negotiations* it became clear that in complex situations some factors may be both the cause and effect of continuing conflict. To manage complexity, the factors were identified and addressed one at a time, or in parallel. At any point in the process, some issues were immediately relevant, some carried over from the past and some in preparation for future processes.

In the *preparatory negotiations*, when parties were willing to start negotiating, the 'rules of engagement' were first agreed upon. These included decisions on the venue for the negotiations, the composition of the administration and secretariat, the structures of the negotiating process and the name of the process. Agreement was reached on how the process should work, including how decisions should be made, how the recommendations should arrive on the negotiating table (for example via the technical committees), what deadlock-breaking mechanisms there should be, who should carry the costs of the process and whether the media should be present. Before formal negotiations began, there was at least partial agreement on the objectives of the negotiation process, and negotiators were trained in advance.

In the *negotiations proper*, the majority of parties were visibly committed to the process, whatever the outcomes might be. The complexity of the negotiations was actively managed, for example by self-imposed deadlines. The documentation was managed efficiently and provided on time. When deadlocks threatened, objective (often international) tried and tested criteria were used.

A softer but nevertheless important issue was the continuous building of personal relationships and trust across party lines, via structured social interaction and a sense of belonging and contributing to the process.

In sum, the parties were willing to participate in an iterative process to seek the strongest possible consensus. A mediator or facilitator helped them to distinguish between their positions, their interests and their needs, thus revealing new options and possible synergies. It was realized that in complex negotiations there are no quick fixes. On the whole, the deadly mediation sins of haste, arrogance, ignorance and inflexibility (Nathan 2014) were avoided.

Finally, a particular feature of South Africa's peace and constitutional negotiations was the absence of formal mediation from outside parties or the international community, although there was some indirect influence at crucial stages. The South Africans, through trial and error, 'did it themselves'. Many of the mechanisms they used, in effect mediative or facilitative, could be called 'self-mediation'. Their eventual success was due to the way the process was structured and managed. Though not a blueprint, this process could be applied with good effect in other conflict situations.

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